

***United States Court of Appeals
for the Second Circuit***



ADDENDUM

ORIGINAL

77-6119

United States Court of Appeals
For the Second Circuit

Docket No. 77-6119

BERALDINE L. ACHA and ARLENE M. EGAN, each
individually and on behalf of all others similarly situated,

Plaintiffs-Appellants,

against

ABRAHAM D. BEAME, individually and in his capacity as Mayor
of the City of New York, MICHAEL J. CODD, individually and
in his capacity as Police Commissioner of the New York City
Police Department, and THE CITY OF NEW YORK, as a public
employer,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

ALDENDUM
to Plaintiffs-Appellants' Brief

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DEFENDANTS-APPELLEES
PETITION FOR REHIRING

75-7388

AD1

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BERALDINE ACHA and ARLENE M. EGAN,
each individually and on behalf of
all others similarly situated,

Plaintiffs-Appellants,

-against-

ABRAHAM D. BEAME, individually and in
his capacity as Mayor of the City of
New York, MICHAEL J. CODD, individually
and in his capacity as Police Commissioner
of the New York City Police Department,
and THE CITY OF NEW YORK, as a public
employer,

Defendants-Appellees.

APPELLEES' PETITION FOR
REHEARING AND SUGGESTION
FOR REHEARING EN BANC
and APPENDIX

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AD1

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 75-7388

BERALDINE L. ACHA and ARLENE M. EGAN,
each individually and on behalf of
all others similarly situated,

Plaintiffs-Appellants,

-against-

ABRAHAM D. BEAME, individually and in his
capacity as Mayor of the City of New York,
Michael J. Codd, individually and in his
capacity as Police Commissioner of the
New York City Police Department, and THE
CITY OF NEW YORK, as a public employer,

Defendants-Appellees.

APPELLEES' PETITION FOR
REHEARING AND SUGGESTION
FOR REHEARING EN BANC

To the Honorable Judges of the United
States Court of Appeals for the
Second Circuit:

Appellees present this petition for rehearing
of the decision of February 19, 1976, which reversed a
judgment of the United States District Court for the
Southern District of New York (DUFFY, J.), denying
plaintiffs' application for a preliminary injunction and
dismissing the action. The order of this Court remanded
the matter to the District court for a hearing on the
merits.

On March 4, 1976, this Court extended appellees' time to file a petition for rehearing to April 5. Rehearing with a suggestion that rehearing en banc is sought pursuant to Rules 35 and 40 of the Federal Rules of Appellate Procedure on the ground that the panel's decision, which held that a facially neutral seniority system established by statute couldn't be applied to women who can prove that they were directly aggrieved by the Police Department's allegedly discriminatory policies, rests upon an erroneous interpretation of Title VII, 42 U.S.C. §2000 e-(h)(7)(3)(h), and that the panel's decision should be reconsidered in view of the decision of the United States Supreme Court in Franks v. Bowman Transportation Co., Inc., 44 U.S.L.W. 4356, March 24, 1976.

HISTORY OF CASE

(1)

On June 26, 1975, the plaintiffs, policewomen in the New York City Police Department, commenced a class action on behalf of all women in the police department under the federal civil rights laws, Title VII and 42 U.S.C. §1983. The action sought to enjoin the Police Department from terminating them from the force on June 30, 1975. It was alleged that, on June 30, the Police Department, as a result of the City's fiscal crisis, would be required to terminate approximately 5000 police officers. The dismissals would be made according to seniority. All of the 450 female police officers appointed since January

1973 would be terminated.

The complaint further alleged that there were approximately 30,374 members of the uniformed force, and that approximately 21,669 males and 618 females held the title of Police Officer. Prior to January 1973, there was a quota of approximately 354 women to be employed in the uniformed force with 223 women in the title of Policewomen. Prior to 1973, women in the Police Department served in the title of Policewoman and men served in the title of Patrolman. The two titles were merged in January 1973.

Prior to 1969, different examinations were given for the positions of Policewomen and Patrolman. In 1969 examinations were given for Policewoman and Police Trainee/Patrolman. The Policewoman position was open to candidates who were 19 years of age on the date of the examination. The Police Trainee/Patrolman position was open to candidates who were 16 years of age on the date of the examination. The position of Trainee would evolve into the Patrolman position upon the Trainee reaching his 21st birthday. The examinations contained the same questions and were graded the same. Separate eligible lists were established for each of the examinations.

Between 1970-1973, there was a job freeze in the Police Department. During this period there were no appointments to the positions of Patrolman and Policewoman, but males who had passed previous examinations for trainee were appointed to the Police Department. In January

1973, the Police Commissioner, in removing the job freeze, determined that men and women should be appointed from separate lists pursuant to a ratio of four men to one woman, regardless of comparative grades on the examinations.

The complaint alleged that in 1973 men were appointed to the title of Police Officer prior to women who had taken the same 1969 examination and received higher grades.

Since 1973 approximately 4,236 males and 513 females have been appointed to the position of Police Officer.

The complaint alleged that the plaintiffs were "willing and qualified to take an examination for Police-woman and/or Police Officer subsequent to 1964 and prior to 1969, but no such examination was open to them".

The complaint concluded that the proposed termination of employment would result in a disproportionate impact on women in the force in violation of their constitutional rights.

At the same time the plaintiffs filed the complaint on June 26, 1975, they applied for a preliminary injunction. In support of their application, the individual plaintiffs submitted affidavits stating that the loss of their jobs would place them in a difficult financial position.

(2)

The hearing on the preliminary injunction was

held on June 30, 1975. During the hearing the parties agreed to stipulate to some of the facts. Prior to 1973, examinations for Policewoman were conducted in 1964 and 1968. During that period more than two examinations were given to male candidates for the position of Patrolman. During this period the written tests for female candidates were identical to the test for male candidates. Between 1969-1973, the Police Department imposed a job freeze. No women were hired but males initially hired as Police Trainees were placed in the position of Patrolman upon reaching the age of 21. As of December 28, 1972, the quota of female police officers was 355 out of total of 26,414. In 1973, the examinations for male and female candidates were intended by the City to be equal.

Approximately 500 of the 6,529 police officers laid off are woman. It was alleged that the total force after layoffs will be 19,407 and would include 180 female officers.

At the conclusion of the hearing the City moved to dismiss the complaint for failure to state a cause of action (91a).

On July 1, the District court, in an opinion, denied the application for a preliminary injunction and dismissed the complaint (98a). On July 30, 1975, the plaintiffs, in a letter to the District court, requested leave to amend the complaint (101a). The plaintiffs sought to add a separate count by pleading facts that would show

that a substantial number of the plaintiffs were "direct victims of discrimination in the Police Department".

The defendants, by letter dated August 7, 1975, stated that the new allegations would not state a cause of action.

On August 28, the District Court signed a judgment dismissing the action (112). In dismissing the action, the Court held that a seniority system which provides that the last hired will be the first fired does not violate Title VII or 42 U.S.C. §1983 even though the layoffs will have a disproportionate effect on people who had been the prior victims of discrimination. In support of its position the District Court cited Jersey Central Power & Light Co. v. Local Union 327 etc., 508 F. 2d 687 (3rd Cir., 1975), pet for cert. filed 44 U.S.L.W. 3084 (August 12, 1975, Docket No. 75-182), and Waters v. Wisconsin Steel Works of Int. Harvester Co., 502 F. 2d 1309 (7th Cir., 1974), pet. for cert. filed 43 U.S.L.W. 3476 (February 24, 1975, Docket No. 74-1064). Both Jersey Central and Waters had reviewed the legislative history of 703(h), 42 U.S.C. §2000e-2(h), which section states that it shall not be an unlawful employment practice for an employer to maintain a bona fide seniority system, and concluded that an employment seniority system, as is involved on the instant appeal, does not violate Title VII.

On appeal to this Court, we urged the panel to follow the decisions of the Courts of Appeals in Jersey Power and Waters. We called to the Court's attention

the legislative history of Title VII which included an Interpretative Memorandum of Senators Clark and Case, an Interpretative Memorandum from the United States Department of Justice and colloquy between Senators Clark and Dickson. The memorandum and the colloquy indicated that if a negro was last hired he could be first fired pursuant to a regular seniority system and that an employer would not be obliged - or indeed permitted to give recently hired negroes special seniority rights at the expenses of white workers hired earlier.

We noted that this Court in United States v. Bethlehem Steel Corp., 446 F. 2d 652 (2d Cir., 1971), after reviewing the legislative history of Title VII, had stated that the history indicated at most that the seniority of a white on the job will not be affected by the claims of blacks hired after he was." 446 F. 2d at p. 661.

The panel hearing the instant appeal refused to follow the decisions of the Courts of Appeals in Waters and Jersey Power. The panel found that the employment seniority system, established in the instant case, by Section 80 of the New York Civil Law, was not insulated from attack by 703(h). In so finding, the panel reviewed the legislative history reviewed by the Courts of Appeals in Waters and Jersey Power (Appendix B, slip op. at p. 2049). The panel found that the legislative history was "sufficiently cloudy to warrant looking at Title VII is

purposes and policies in interpreting 703(h)" (id., p. 2054). The panel determined that the plaintiffs, if they could show that have been the victims of discrimination, should be put in their rightful place in seniority (id. at p. 2055).

Chief Judge Kaufman, in a concurring opinion, gave an example of the results anticipated by the opinion. If a woman took and passed the 1964 examination for police-woman "and achieved a score on that examination that, were she a man, would have assured her employment, but nevertheless was not appointed until 1970 solely because of the low quota for women prevailing in the Police Department in 1964, she would be entitled to constructive seniority (id. at pp. 2059-1060).

The panel, having found that the plaintiffs had stated a cause of action under Title VII, stated that it was unnecessary to "deal with plaintiffs' claims under 42 U.S.C. §1983 or their argument that the illegality of defendants' hiring policies prior to Title VII is a controlling consideration in applying §703(h)" (id. at p. 2057, fn. 15).

GROUND FOR REHEARING

Section 703(h) preserves bona-fide seniority systems. The decision of this panel renders that section meaningless. The panel did not distinguish between discrimination occurring before the effective date of the act and discrimination occurring after the effective date of

the act (id., at p. 2057, fn. 15). Under the panel's interpretation of Title VII, those of the plaintiffs who can show they have been the victims of prior discrimination are entitled to their "rightful place" in seniority. Under such an interpretation of Title VII, the only instance where plaintiffs will not be eligible for constructive seniority is where they have not proven past discrimination. In such circumstances, their claims should be dismissed for failure to state a cause of action under Title VII without a need to look at Section 703(h), which assumes that a cause of action has been established under Title VII but excepts from the application of the act bona fide seniority systems.

The decision of this panel is, we believe, inconsistent with the Supreme Court's very recent decision in in Franks v. Bowman Transportation Co., 44 U.S.L.W. 4356, March 23, 1976. In Franks, the Supreme Court upheld the grant of constructive seniority to employees of a private company who had been the victims of discrimination after the effective date of Title VII. The Supreme Court reviewed the legislative history of Title VII, which had been reviewed by the Courts of Appeals in Waters and Jersey Power and by the panel in the instant case. The Court then stated (44 U.S.L.W. at p. 4360):

"Accordingly, whatever the exact meaning and scope of §703(h) in light of its unusual legislative history and the absence of the usual legislative materials, see Vass, *supra* at 457-458, it is apparent that the thrust of the section is directed toward defining

what is and what is not an illegal discriminatory practice in instances in which the post-Act operation of a seniority system is challenged as perpetuating the effects of discrimination occurring prior to the effective date of the Act. There is no indication in the legislative material that §703(h) was intended to modify or restrict relief otherwise appropriate once an illegal discriminatory practice occurring after the effective date of the Act is proved - as in the instant case, a discriminatory refusal to hire."

The language in the opinion in Franks indicates that §703(h) was intended to protect bona fide seniority systems where the discrimination was prior to the effective date of the act. At the very least, the opinion shows that there are different considerations depending on when the discrimination occurred.

As we noted above, the panel in the instant case did not distinguish between discrimination before the effective date of the Act and discrimination after the effective date (Appendix B, slip op. at p.2057). In fact, the discrimination in the instant case occurred in 1969 or earlier, at least three years prior to March 24, 1972, when Title VII was made applicable to public corporations. Between 1970 and 1973, the Police Department had a job freeze. In 1973, the Police Department began appointing individuals to the position of police officer on a non-discriminatory basis.

The decision of the panel in the instant case appears to be based on the assumption that the underlying

wrong is the present operation of the seniority system since it permits a woman to prove that at any time in the past, which in some cases can be more than twelve years, that she has been the victim of discrimination. Franks stated that the underlying wrong is not the operation of the seniority system "but of a racially discriminatory hiring system." 44 U.S.L.W. at p. 4359.

Plaintiffs, some of whom claim to have been the victims of discrimination as long as twelve years ago, but did nothing during this period until the operation of a facially neutral seniority system resulted in their layoffs, should not be permitted to receive constructive seniority and thereby affect adversely the position on the seniority list of males who have been working during this entire period. In Chance v. Board of Examiners (Chance IV), slip op. 6587 (2d Cir., January 19, 1976), the individuals who received constructive seniority as a result of the proposed order of the Board of Education were the plaintiffs who had brought the action challenging the Board's hiring policies. That is not the case here. Here, the plaintiffs, although claiming to have been discriminated against in the past, sat by for years without doing anything about such alleged discrimination, while, in the meantime, other police officers were hired and made substantial career commitments to the Department.

CONCLUSION

FOR THE REASONS STATED ABOVE, THIS COURT
SHOULD RECONSIDER ITS DECISION OF FEBRUARY 19,
1976, AND THE CASE SHOULD BE SET FOR REHEARING
EN BANC.

April 5, 1976

Respectfully submitted,

W. BERNARD RICHLAND,
Corporation Counsel,
Attorney for Defendants-
Appellees.

L. KEVIN SHERIDAN,
LEONARD KOERNER,
GREGORY FROST,
of Counsel.

ORDER OF U.S. COURT OF APPEALS
2d CIRCUIT, DENYING PETITION
FOR REHEARING

United States Court of Appeals

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the tenth day of May, one thousand nine hundred and seventy-six.

Present:

HON. IRVING R. KAUFMAN,

HON. WILFRED FEINBERG,

HON. J. JOSEPH SMITH,

Circuit Judges.

BERALDINE L. ACHA, AND ARLENE M. EGAN,
each individually and on behalf of all
others similarly situated,

Appellants

v.

ABRAHAM D. BEAMZ, individually and in
his capacity as Mayor of the City of
New York, etc.,

Appellees

Docket No. 75-7388

A petition for a rehearing having been filed herein
by counsel for the appellee

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

A. Daniel Fusaro
A. DANIEL FUSARO,
Clerk

SUPPORTING AFFIDAVIT OF
MURRAY A. GORDON

BERALDINE L. ACHA, et al.,
Plaintiffs,

-against-

ABRAHAM D. BEAME, et al.,
Defendants.

CIT OF NEW YORK
State of New York

Stay and injunction pending appeal.

MOTION BY: MURRAY A. GORDON, P.C.
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New York, N.Y. 10017
212-661-7900

PROPOSING COUNSEL:
Name and
telephone number:

W. BERNARD RICHLAND, ESQ.
Corporation Counsel
Municipal Building,
New York, N.Y. 10007
212-566-3929

IS ONE PARTY A PARTY TO THE MOTION? ☒ Yes ☐ No ☐ Unknown

HAS SERVICE BEEN MADE? ☒ Yes ☐ No

IS ORAL ARGUMENT DESIRED? ☒ Yes ☐ No
(Substantive Motions Only)

REGULATORY FILING DATE: August 16, 1977
(See Federal Circuit Rule 12.1)

EMERGENCY MOTIONS, WRITS, ETC. ☒ Yes ☐ No

HAS REQUEST FOR RELIEF BEEN MADE? ☒ Yes ☐ No
(See F.R.A.P. Rule 63)

WOULD EXPEDITED APPEAL ELIMINATE THE
NEED FOR THIS MOTION? ☐ Yes ☒ No

IF NO, EXPLAIN WHY NOT: Irreparable damage re
Civil Rights Acts discrimination and pos-
sibility of no back pay for intervening
period.

DATE ARGUMENT OR APPEAL CONCLUDED: Not
Scheduled

JUDGE TO ADVISE WHEN TO FILE A MOTION FOR
United States District Judge Kevin T. Duff, Southern District of New York

Stay of Police Department ("PD") rehiring scheduled August 5, 1977 unless revised seniority of 11 members of the class, who were found to have been discriminated against by the PD on the basis of their sex, is reflected in rehiring. A stay is sought pending appeal.

NOTE: IS MOTION FOR SUMMARY JUDGMENT AND DISPOSITION?

Application to District Judge Kevin T. Duff, which was denied, except to extent that 11 PD positions to be held open until August 16, 1977.

STATEMENT OF THE ISSUE(S), PRESENTED BY THIS MOTION:

Whether merits of appeal and consideration of relative interests at stake warrant stay of PD rehiring unless 11 class members are given proper seniority denied to them as a result of PD sex discrimination, which discrimination was found by Special Master and confirmed by the Court below.

BRIEF STATEMENT OF THE FACTS, with page references to the moving papers:

Class action charging discrimination in hiring and layoff of women in the on grounds of sex. Standards for proof of discrimination set by the prior decision of this Court. 531 F.2d 648 (1976). Currently 11 class members have proven they were discriminated against on the basis of such standards. The Court below nevertheless has denied them any relief as a result of recent United States Supreme Court decisions. The appeal raises, *inter alia*, entitlement of such 11 class members to have their rightful seniority reflected in imminent PD rehiring of approximately 400 PD police officers. (See supporting affidavit of Murray A. Gordon, dated August 3, 1977).

SUMMARY OF THE ARGUMENT, with page references to the moving papers:

The Court below clearly erred in denying injunctive relief. Such relief is required by reason of prior acknowledged final judgments as a matter of *res judicata*, which judgments were improperly vacated by the Court below. (See Memorandum of Law, pages 3 - 5). The Court below also incorrectly interpreted and applied the Supreme Court decisions upon which it relied (*id.* at 5 - 7). Plaintiffs-appellants have fully met standards established by the Court for the injunctive relief which the Court below has denied (*id.* at 8 - 11).

8/4/77
Date

Print Name:

FOR CONSIDERATION BY THE CLERK OF COURT:

PLAINTIFFS-APPELLANTS' NOTICE OF MOTION
BEFORE U.S. COURT OF APPEALS,
2d CIRCUIT, FOR A STAY PENDING APPEAL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
LERALDINE L. ACHA and ARLENE M. EGAN,
each individually and on behalf of all
others similarly situated,

Appellants,

-against-

AFFIDAVIT

77-6119

ABRAHAM D. BEAME, individually and in
his capacity as Mayor of the City of
New York, MICHAEL J. CODD, individually
and in his capacity as Police Commissioner
of the New York City Police Department,
and THE CITY OF NEW YORK, as a public
employer,

Appellees.

-----X
STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

MURRAY A. GORDON, being duly sworn, deposes and says:

1. I am a member of the firm of Murray A. Gordon,
P.C., attorneys for the plaintiffs-appellants herein and the class
they represent in the above-entitled action. I submit this affi-
davit in support of the motion of plaintiffs-appellants pursuant to
Rule 8, Fed.R.App.P., for a stay of rehiring to the New York City
Police Department ("PD") scheduled on August 5, 1977, which do not
reflect the rightful seniority to which 11 class members named in
the Third, Fourth, and Fifth Interim Reports of the Special Master
are entitled, according to those Reports, by reason of sex discrim-

ination against those 11 class members by the PD. The Court below has directed that 11 of all such rehiring be deferred until August 16, 1977, the return date of this motion.

2. This class action was commenced on June 26, 1975 by Beraldine L. Acha and Arlene M. Egan, individually and on behalf of all others similarly situated, to enjoin the disproportionate layoff of women from the PD. Plaintiffs and the class they represent are former Policewomen ("FPW"), whose employment with the PD was terminated on or after June 30, 1975, solely for budgetary reasons, allegedly pursuant to §80 of the New York Civil Service Law which essentially provides for a "last-hired first-hired" seniority system in the event of layoffs.

3. Each of the named plaintiffs filed charges with the New York City Commission on Human Rights and with the Equal Employment Opportunity Commission ("EEOC") on June 25, 1975.*

4. Until December 1973, separate examinations were given for the positions of Patrolman and Policewoman. Women are not eligible for the former title. Nor were women eligible for the title of Police Trainee, which was open to men under the age of 21. Men appointed to the position of Trainee were appointed to the position of Patrolman upon reaching their twenty-first birthday. The date of appointment as a Trainee is used for defendants to determine a Police Officer's effective date of appointment for layoff purposes.

2.

*The charge filed by a third class member, Alice McCain, in 1973, is discussed infra at ¶38.

5. It is undisputed that prior to 1973, there was a quota imposed by the PD limiting the number of women who could be appointed to the PD.

6. Examinations for the position of Policewoman were given on or about the following dates:

<u>Examination No.</u>	<u>Given</u>
8689	December 12, 1959
9968	March 21, 1964
9081	October 25, 1969

7. During the aforesaid period, at least 53 examinations were open for the positions of Patrolman and/or Police Trainee on or about the following dates:

<u>Examination</u>	<u>Position</u>	<u>Given</u>
8975	Patrolman	March 25, 1961
9250 - Group 1	"	June 17, 1961
9250 - Group 2	"	August 26, 1961
9250 - Group 3	"	November 4, 1961
" - Group 4	"	January 27, 1962
9503 - Group 1	"	April 14, 1962
" - Group 2	"	June 23, 1962
" - Group 3	"	September 15, 1962
" - Group 4	"	October 27, 1962
" - Group 5	"	November 3, 1962
" - Group 6	"	November 10, 1962
" - Group 7	"	November 17, 1962
" - Group 8	"	November 24, 1962
" - Group 9	"	December 1, 1962
" - Group 10	"	December 8, 1962
" - Group 11	"	December 15, 1962
9728 - Group 1	"	January 5, 1963
" - Group 2	"	January 12, 1963
" - Group 3	"	January 19, 1963
" - Group 4	"	January 26, 1963
" - Group 5	"	February 2, 1963
" - Group 6	"	February 9, 1963
" - Group 7	"	February 16, 1963
" - Group 8	"	February 23, 1963
" - Group 9	"	March 2, 1963
" - Group 10	"	March 9, 1963
" - Group 11	"	March 16, 1963
" - Group 12	"	March 23, 1963
" - Group 13	"	March 30, 1963
" - Group 14	"	June 14, 1963
" - Group 15	"	September 14, 1963

<u>Examination</u>	<u>Position</u>	<u>Given</u>
9728 - Group 16	Patrolman	December 14, 1963
1115	Trainee	March 21, 1964
9996 - Group 1	Patrolman	March 21, 1964
" - Group 2	"	June 13, 1964
" - Group 3	"	November 14, 1964
1215	Trainee	January 16, 1965
1382	Patrolman	May 15, 1965
1506	"	October 16, 1965
1455	Trainee	March 12, 1966
1557	Patrolman	March 12, 1966
6013	"	June 6, 1966
6069	"	October 22, 1966
6083	"	January 21, 1967
6127	Patrolman/ Trainee	April 1, 1967
7017	Patrolman/ Trainee	June 3, 1967
7046	Trainee	November 4, 1967
7065	Patrolman/ Trainee	May 11, 1968
8046	Patrolman/ Trainee	July 20, 1968
8108	Patrolman/ Trainee	January 21, 1969
9019	Patrolman	April 6, 1969
9049	Patrolman	June 28, 1969
9080	Patrolman/ Trainee	October 25, 1969

8. On October 25, 1969 two separate examinations, No. 9080 ("Exam 9080") and No. 9081 ("Exam 9081"), were given for Police Trainee-Patrolman and Policewoman, respectively. Although these examinations were announced and administered separately, the questions were the same and the examinations were graded in the same manner; separate eligible lists, however, were established as a result of these two examinations. Exam 9080 was open only to men who were not less than 16 years of age on the date of the written examination and 17 years of age on the date of appointment. Exam 9081 was open only to women not less than 19 years of age on the date of the written examination. Men passing Exam 9080 were eligible

for the position of Police-Trainee; a position which, as noted above, entitled them to become Patrolmen upon their 21st birthday. There was no comparable trainee position available for women.

9. From approximately February 1970 to January 1973, as a result of a freeze on hiring by the PD no appointments were made directly to the positions of Patrolman or Policewoman. However, approximately 125 men who had passed Exam 9080 were appointed to the position of Police Trainee on May 8, 1970. These men each had passed Examination No. 9080 with scores of 84 or better, and were less than 21 years of age on May 8, 1970. Moreover, most of these men were appointed as Patrolmen, during the freeze, upon reaching their 21st birthday. At least forty-nine women who took and passed Examination No. 9081 (the questions on which were the same as those on Examination No. 9080), likewise achieved scores of 84 or better, and were less than 21 years of age on May 8, 1970. These women were not appointed on the aforesaid date solely on the grounds that the position of Police Trainee was open only to men. Men who were appointed to the position of Police Trainee on May 8, 1970 accrued sufficient seniority to withstand the layoffs in that they were either not laid off on June 30, 1975 or were reinstated on or before July 10, 1975.

10. When the freeze was lifted in January, 1973, men and women were appointed to the PD from separate lists. During 1973, men were appointed from at least 7 different lists. Women were appointed only from one list - that resulting from Examination No. 9081. Between the end of the freeze, on January 29, 1973 and the

June 30, 1975 layoffs, 4,236 males and 513 females were appointed to the PD. Less than 11% of all persons appointed to the PD after the freeze were female, although approximately one-quarter of all persons taking exams in October 1969 and December 1973, open to women, were female.

11. The June 30, 1975 layoffs, allegedly pursuant to a last-hired first-fired method of layoff, had the result of perpetuating the past discriminatory hiring policies by the PD. Approximately 60% of all Policewomen (as compared with less than 20% of all Patrolmen) were terminated. Prior to 1973, women comprised approximately 1.34% of the PD. Prior to the layoffs, women constituted approximately 2.62% of the PD. As of the July 10, 1975 layoffs, approximately 1.34% of all PD police officers were women.

12. The June 30, 1975 layoffs were based upon a single list comprising men and women in the PD, although women were appointed to the title of Policewoman, and men were appointed to the title of Patrolman, and although as of June 30, 1975, the titles were separate for budgetary purposes as acknowledged by defendants in the hearings of that date before Judge Duffy, and as is confirmed by a computer print-out, prepared by the Comptroller of the City of New York dated June 30, 1975, which sets out the separate titles of Patrolman and Policewoman for payroll and union code purposes. Copies of pages 1, 56, and 58 of the print-out are annexed hereto as Exhibit "A". The separate titles of Patrolman and Policewoman

are established by §§434a-1.0 and 434a-2.0 of the Administrative Code of the City of New York, which do not provide for a unisex title. There has been no showing that the defendants were required to use a merged list of men and women, who had been appointed from separate lists to separate titles, for the June, 1975 layoffs. Defendants acknowledged that the issue whether to establish a single, merged layoff list of Policewomen and Patrolmen was not even considered until the end of 1974.

13. Prior to the June 30, 1975 layoffs, plaintiffs-appellants brought an action in the United States District Court for the Southern District of New York for a declaratory judgment declaring the proposed disproportionate layoffs to be illegal; a preliminary injunction restraining the layoffs pending hearing and determination of the action; and a permanent injunction enjoining the layoffs and the continuation of the discriminatory conduct of defendants.

14. A hearing was held on plaintiffs-appellants' motion for a preliminary injunction on June 30, 1975 before Hon. Kevin T. Duffy.

15. In an opinion and order dated July 1, 1975, Judge Duffy denied the motion for a preliminary injunction and dismissed the action. 401 F.Supp. 816 (S.D.N.Y. 1975).

16. Subsequent to that action, plaintiffs-appellants sought, unsuccessfully, to amend their complaint in light of a supervening decision by the Court of Appeals for the Fifth Circuit in Watkins v. United Steel Workers, 516 F.2d 41 (5th Cir. 1975).

17. Plaintiffs-appellants appealed from the order and judgment of the District Court which was entered on September 2, 1975.

18. In an opinion dated February 19, 1976, this Court reversed the order and judgment of Judge Duffy and remanded the action to the District Court for further proceedings. 531 F.2d 648. This Court, in remanding this case, held that:

"If a female police officer can show that, except for her sex, she would have been hired early enough to accumulate sufficient seniority to withstand the current layoffs, then her layoff violates section 703(a)(1) of Title VII, 42 U.S.C. §2000e-2(a)(1), since it is based on sexual discrimination." (Id. at 654).

This Court further directed that the District Court determine expeditiously, either by stipulation or after a hearing, which class members would have been hired early enough to withstand the current layoffs had defendants not discriminated on the basis of sex in their prior hiring practices. Id. at 656. However, this Court declined to deal with plaintiffs-appellants' claims under 42 U.S.C. §1983 and the Fourteenth Amendment to the United States Constitution. Id. at 656 n. 15.

19. Defendants-appellees petitioned this Court for rehearing or rehearing en banc on the grounds that Title VII did not apply to New York City prior to 1972, arguing that the prior hiring practices of defendants were not in violation of Title VII at the time they occurred. In an order dated May 10, 1976, this Court denied the aforesaid petitions.

20. On or about April 1, 1976, approximately 205 PD police officers were rehired, including approximately 204 Patrol-

men. These rehiringings were pursuant to a federal grant. As the proceedings contemplated by this Court were not yet initiated, the parties herein stipulated that these rehiringings were subject to the seniority rights of class members as might be subsequently determined in this action.

21. On May 27, 1976, plaintiffs-appellants moved, inter alia, for class certification and for summary judgment for 54 class members, including 49 FPWs who, but for their sex, would have been appointed as Police Trainees on May 8, 1970, and thereby withstood the layoffs. As noted above, approximately 125 males who passed Exam 9080 with scores of 84% or higher and who were under 21 years of age on May 8, 1970, were appointed as Trainees on that date. 49 of the class members on whose behalf summary judgment was sought passed Exam 9081 (given the same date and having the same questions as Exam 9080.* Summary judgment was also sought on behalf of six** class members who allegedly presented uncontradicted documentary proof of entitlement, under the standards of proof established by this Court, to sufficient seniority to withstand the layoffs.

22. Defendants-appellees cross-moved for summary judgment, arguing, inter alia, that the action was barred by the

*This group inadvertently included one class member who was over 21 on May 8, 1970.

**One of these six class members was also included in the group of 49.

applicable statute of limitations and by laches, and that plaintiffs failed to state a cause of action as the only discriminatory practices occurred before March 24, 1972, when Title VII of the Civil Rights Act of 1964 first became applicable to municipalities.

23. On July 7, 1976 defendants-appellees notified counsel and the District Court that they planned to rehire 60 PD police officers pursuant to another federal grant on July 19, 1976. These rehiring were scheduled to include 59 males and 1 female.

24. In an opinion and order dated July 16, 1976, Judge Duffy certified the class herein as consisting of all FPWs whose employment with the PD was terminated on or after June 30, 1975 solely for budgetary reasons. The Court also denied defendants' cross-motion for summary judgment, and granted partial summary judgment on behalf of 38 of the 49 FPWs who had alleged that they would have been hired as Trainees on May 8, 1970 but for their sex. Each of these 38 class members scored 87% or higher on Exam 9081. Judge Duffy held that if 125 vacancies had been available on a non-discriminatory basis on May 8, 1970 to both males and females, only candidates scoring 87% or higher would have been appointed. The defendant-appellees were enjoined from rehiring from a seniority roster which did not reflect the proper seniority status (May 8, 1970) of these 38 women. A copy of the opinion and order of Judge Duffy dated July 16, 1976 is annexed hereto as Exhibit "B".

25. In the aforesaid order and opinion, the partial summary judgment on behalf of 38 class members was certified as a final judgment by Judge Duffy pursuant to Rule 54(b), Fed.R.Civ.P.

26. On August 4, 1976, an order and partial summary judgment was entered consistent with the aforesaid opinion. A conformed copy of this order and partial summary judgment is annexed hereto as Exhibit "C". In this order and judgment, Judge Duffy appointed a Special Master, Renee Roberts, to hear and report on the remaining claims of class members.

27. On August 13, 1976, approximately 32 of the 38 class members granted revised seniority dates of May 8, 1970 were reinstated to the PD pursuant to a federal grant.

28. On August 30, 1976, defendants-appellees appealed "from so much of the order and partial summary judgment entered... on August 4, 1976 as directs defendants to fix seniority dates for 38 plaintiffs at a date no later than May 8, 1970." A copy of defendants-appellees' notice of appeal is annexed hereto as Exhibit "D".

29. On September 16, 1976, defendants filed a pre-argument statement in connection with their appeal, setting forth the issues they proposed to raise on appeal: "laches, statute of limitations, and subject-matter jurisdiction." A copy of this pre-argument statement is annexed hereto as Exhibit "E".

30. In an order dated October 7, 1976, this Court dismissed the appeal by defendants for failure to docket their appeal. A copy of this order is annexed hereto as Exhibit "F".

31. On September 30, 1976, extensive hearings commenced before the Special Master to determine which class members

would have been hired early enough to withstand the layoffs but for the discriminatory practices of defendants. .

32. To date, approximately 150 class members have presented their claims for retroactive seniority and/or back pay before the Special Master, encompassing almost 9,000 pages of transcripts. Findings concerning entitlement to retroactive seniority dates have been rendered by the Special Master in 77 cases in five Interim Reports. In 45 cases, the Special Master found that, but for the prior discriminatory practices of defendants-appellees, class members would have been hired earlier than they actually were. The claims of 27 class members for revised seniority were denied by the Special Master. In five cases, the Special Master has stated that further findings are necessary.

33. On March 28, 1977 an order and judgment was entered in anticipation of rehiring for permanent positions in the PD on March 31, 1977, and temporary federally funded positions on April 1, 1977. In this order and judgment, Judge Duffy revised the seniority status of 34* class members following findings by the Special Master. 26 of those were granted revised seniority dates of February 8, 1970 or earlier, which seniority dates were early enough to have enabled them to have withstood the layoffs. The other 8 were granted revised seniority dates which, in several

12.

*As of March 28, 1977, only the first two Interim Reports of the Special Master have been filed. Eleven class members have been found entitled to revised seniority dates in the later three Interim Reports but were not dealt with in the March 28, 1977 order.

36. As a result of the cooperation of counsel for both sides and expeditious determinations by the Special Master and by Judge Duffy, all rehiring of FPWs pursuant to this litigation has been accomplished without "bumping" a single incumbent from the PD either from a permanent or from a temporary position.

37. On June 15, 1977, defendants-appellees moved pursuant to Rules 56 and 60 of the Federal Rules of Civil Procedure to renew their cross-motion for summary judgment, previously denied by Judge Duffy, and from all subsequent orders and/or judgments entered on the alleged grounds that "intervening decisions of the United States Supreme Court are controlling on the issues presented in this case and in defendants' prior cross-motion for summary judgment and require that judgment be granted in favor of defendants." The cases relied upon by defendants-appellees in this order were International Brotherhood of Teamsters v. United States, 45 U.S.L.W. 4506 (May 31, 1977), and United Air Lines v. Evans, 45 U.S.L.W. 4566 (May 31, 1977).

38. The motion of defendants-appellees was based, in part, upon the contention that the present action is time barred. On July 13, 1977, our firm was notified by the EEOC that Alice McCain, a class member, filed charges with the EEOC in the latter part of 1973, alleging discrimination based on sex in the PD's hiring practices. That charge is still pending before the EEOC. Based upon advice our office has received from the EEOC, matters included in the EEOC investigation of the McCain charge included the same prior discriminatory hiring practices cited in the instant action. Ms. McCain has authorized our firm to obtain a right to

cases, significantly affected their position on the preferred list for rehiring. The March 28, 1977 order and judgment enjoined the defendants-appellees from any rehiring which did not reflect the proper seniority status of these 34 class members. A copy of this order and judgment is annexed hereto as Exhibit "G".

34. Pursuant to the aforesaid order, on March 31, 1977 25* class members, who were granted seniority dates early enough to have enabled them to have withstood the layoffs, were rehired to permanent positions in the PD on March 31, 1977. Four** of the other 8 class members granted revised seniority dates were rehired to federally funded positions on April 1, 1977 pursuant to the order and judgment of Judge Duffy.

35. To sum up, as of April 1, 1977, approximately 61 class members had been rehired to the PD with revised seniority dates obtained in this litigation: approximately 32 of the 38 granted partial summary judgment pursuant to a one-year federal grant on August 13, 1976;*** 25 to permanent positions on March 31, 1977, and 4 to special federally funded positions on April 1, 1977.

13.

*The 26th class member awarded a date early enough to have withstood the layoffs had been rehired on August 13, 1976.

**One of these eight class members had previously been appointed to a federally funded position. Three others were held not qualified for such positions as they had not been unemployed for the requisite period prior to April 1, 1977.

***These class members are scheduled to receive permanent appointments on August 13, 1977.

sue letter from the Department of Justice, to institute an action in this Court on her behalf and on behalf of all other similarly situated women in the PD (which would, at a minimum, include all women hired by the PD no earlier than 300 days prior to the date her charge was filed with the EEOC, including at least 90% of the present class), and to move to consolidate her case with the present action. We intend to take these actions as expeditiously as possible. Plaintiffs-appellees requested that if Judge Duffy found defendants' defense of the statute of limitations pursuant to Title VII convincing, that he defer a decision on this issue until such time as the Court could consider the effect of this charge on other class members.

39. Following their motion, defendants-appellees advised the Court that they planned to rehire PD police officers to both permanent and federally funded positions. The precise date for these rehiring have not been set, however, I have been advised that 400 rehiring will take place on or about August 5, 1977. Defendants-appellees have further indicated that they oppose including any of the 11 class members found entitled to revised seniority dates by the Special Master, in the proposed rehiring.

40. In an opinion and order dated July 28, 1977, Judge Duffy granted defendants-appellees' motion to vacate partial summary judgment previously entered for 38 class members, relying on the two recent Supreme Court holdings mentioned above in ¶37. However, Judge Duffy denied defendants-appellants' motion for summary judgment without prejudice to its renewal, along with a

motion addressed to the McCain amendments. Judge Duffy also refused to vacate injunctions previously granted on behalf of class members. However, Judge Duffy denied the application of plaintiffs-appellants for injunctive relief on behalf of class members dealt with in the Third, Fourth, and Fifth Interim Reports of the Special Master.

41. In the aforesaid order and opinion, Judge Duffy determined that the holding of this Court--that class members who prove that they were victims of prior discrimination are entitled to relief pursuant to Title VII of the Civil Rights Act of 1964 is no longer applicable following the decision of the Supreme Court in Teamsters and Evans. Judge Duffy ruled that to succeed under Title VII, plaintiffs:

"...must establish a prima facie case of a Title VII violation which occurred after the effective date of the Act and within the period of the statute of limitations. Thereafter, any class member who was not hired until after March 24, 1972 and, but for her sex would have been hired earlier than her actual appointment date, is entitled to seniority relief."

With respect to so much of this action as is based upon 42 U.S.C.

§1983 and the Fourteenth Amendment to the United States Constitution,

Judge Duffy ruled that:

"Since this action was filed on June 26, 1975, any discriminatory acts which occurred within the three preceding years would be actionable. With respect to hiring practices, the discriminatory act for statute of limitations purposes, occurs when a male police officer is hired in the place of a qualified female with a higher test score. Thus, class members not hired until after June 1972, may attempt to prove a case. The plaintiffs may also attempt to prove

that the layoffs themselves were violative of section 1983. However, they may not attempt to 'bootstrap' a challenge to a pre-June 26, 1972 hiring practice simply by alleging that the effects of the earlier discrimination lingered until layoff....

For the purposes of this case, it suffices to say that the sex-based distinctions must have more than simply a conceivable basis in reason but need not be justified by a compelling interest; there must be some substantial justification. Further refinement of this standard may await the development of proof at trial.

Plaintiffs suggest that the April 1973 merger of the patrolman and policewoman ranks is conclusive evidence of a lack of any justification for the distinction between men and women in the N.Y.P.D. While I agree that the merger may be strong evidence of a lack of justification, I am reluctant to foreclose defendants from introducing proof on the issue. To do so would inhibit employers from correcting past acts of sex discrimination for fear that such activity would immediately subject them to liability.

If the plaintiffs should succeed in establishing a lack of substantial justification for treating women in the N.Y.P.D. differently than men, their task is not complete. In order to establish a violation of the Equal Protection Clause enforceable under 42 U.S.C. §1983, there must be proof that a discriminatory intent or purpose was a motivating factor in the official action. Washington v. Davis, 426 U.S. 229, 238-48 (1976); Village of Arlington Heights v. Metropolitan Housing Development, 45 U.S.L.W. 4073, 4077 (Jan. 11, 1977). The discriminatory impact of a facially neutral policy is probative, but not determinative, of intent. De jure discrimination, in which a law or official policy expressly treats a class of persons in a less favorable manner, is, by its nature, intentional. See Keyes v. School Dist. No. 1, 413 U.S. 189, 205 (1973); Washington v. Davis, 426 U.S. at 240. Thus, plaintiffs must show a discriminatory intent behind neutral policies which adversely affect women or show non-neutral, express discrimination."

42. The factual determinations of the Special Master in the Third, Fourth, and Fifth Interim Reports were confirmed by Judge Duffy. However, the cases of class members found entitled to revised seniority dates were remanded to the Special Master for new findings and conclusions consistent with the opinion. Injunctive relief was denied by Judge Duffy even as to those 11 class members as to which he confirmed the Special Master's findings that they were the victims of PD sex discrimination in their hiring. The other factual issues raised in the opinion and order were also remanded to the Special Master. A copy of the July 28 order and opinion of Judge Duffy is annexed hereto as Exhibit "H".

43. The effect of the denial of the injunctive relief sought by plaintiffs-appellants is that 11 class members who have demonstrated to the satisfaction of both the Special Master and Judge Duffy that but for prior discriminatory hiring practices by defendants-appellees, they would have been hired to the PD earlier than they otherwise were, and who have therefore met the burden of proof prescribed by this Court for relief, are now being denied re-hire to the PD. Rehiring of these class members who are entitled to relief pursuant to the mandate of this Court, can be accomplished at this time without requiring the bumping of any incumbent Police Officer.

44. Plaintiffs-appellants, by notice of appeal dated August 2, 1977, appealed from so much of Judge Duffy's July 28th order as granted defendants' motions and denied plaintiffs' motions.

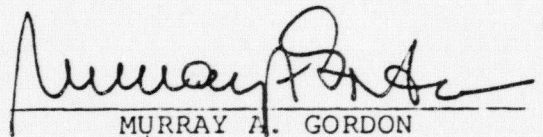
45. On August 2, 1977 counsel for plaintiffs-appellants moved in the Court below to stay pending appeal the 400 hirings scheduled for August 5, 1977, unless such rehiring reflects the revised seniority dates to which 11 laidoff Policewomen were entitled, according to the Special Master, by reason of the PD discrimination against them, on the ground of sex, in their hirings and layoffs. On August 3, 1977 Judge Duffy advised counsel for the respective parties that the motion was denied except to the extent that the PD was ordered to hold open 11 positions of the 400 scheduled rehiring until August 16, 1977, the return date of the instant motion before this Court.

46. In the event that the motion is granted, the 11 class members will be rehired since the revised seniority dates fixed for them by the Special Master are such that they will be among the group of laidoff police officers entitled to rehiring on August 5, 1977. If the instant motion is denied, and the 11 class members are ultimately successful in this litigation, the date of their rehiring will be deferred indefinitely since it is not possible to estimate at this time when this litigation will reach such a state that an order directing their rehiring would issue.

47. The defendants at all times throughout this action have contended that reinstated class members are not entitled to back pay. To this point no adjudication has been made by the Court below, or this Court, concerning the right of any members of the class herein to back pay. In the event that the 11 class members

are ultimately reinstated but are not allowed back pay, in accordance with the contentions of the defendants herein, those class members will sustain irreparable harm by reason of the denial of the instant motion.

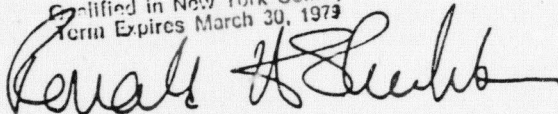
48. There has been no other or prior application for the relief herein sought except as hereinbefore set forth.


MURRAY A. GORDON

Sworn to before me

this 4th day of August, 1977.

RONALD H. SHECHTMAN
Notary Public, State of New York
No. 31-4500373
Qualified in New York County
Term Expires March 30, 1979



NAME ADDRESS	TITLE DESCRIPTION	POSITION DESCRIPTION	TITLE GRADE	POSITION CODE
ABLE CLERK		HRB	91101	EE EH EJ
ACCOUNT CLERK		DC 37	08000	ED YH
ACCOUNT CLERK		DC 37	10101	ED EN JA JX
ACCOUNTANT		DC 37	08600	UC
ACCOUNTANT		DC 37	40510	HP JA JY UC
ACCOUNTANT (FSA)		DC 37	00140	UC
ACTUARY		DC 37	40710	UC
ADDICTION AID		DC 37	02549	HP HP
ADDICTION COUNSELOR		DC 37	00055	HM HM HT
ADDICTION SERVICES EDUCATION SPECIALIST		DC 37	02261	HP HR
ADDICTION SPECIALIST		DC 37	56070	HM HM HP HR
ADDICTION SPECIALIST (METHADONE)		DC 37	56071	HM HM HM
ADMINISTRATIVE AID		DC 37	10134	JX
ADMINISTRATIVE ASSOCIATE		CWA	01910	OJ
ADMINISTRATIVE ASSOCIATE		CWA	10130	OJ
ADMINISTRATIVE ASSOCIATE (ED OF EFFECT)		CWA	94206	FR

Exhibit A

66-30-15

CITY AND COUNTY OF PHOENIX
 AUTOMATIC REGISTRATION OF TITLES AND JOBS

PAGE 16

NEW ADDITION	TITLE DESCRIPTION	UNION DESCRIPTION	TITLE CODE	UNION CODE
	PARK WORKER (117-W)	DC 37	03556	BP
	PARKING ENFORCEMENT AGENT	CWA	71612	CS
	PARKING METER COLLECTOR	DC 37	41110	FN
	PATHOLOGIST	DC	53510	ILJ
* * *	PATIENT AIDE (0517)	DC 37	00230	AH HM HR YH
	PATIENT AIDE (51A)	DC 37	00162	AH HM HP YH
	PATIENT AIDE (117-6)	DC 37	02520	AH HM HR YH
* * * *	PATIENT AIDE (WRFP)	DC 37	00198	AH HM HR YH
	PATROLMAN	PBA	70210	CJ FA FB FC GF GJ CL CN CT CV IC IF II
	PAVER	PRP	92420	CM
	PEDIATRIC NURSE ASSOCIATE	DC 37	09151	CK
	PERSONNEL ASSISTANT	CWA	13715	CJ
	PERSONNEL ASSOCIATE	CWA	13730	CJ

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

FD-302 (Rev. 1-25-60)

NAME	TITLE	ORGANIZATION	ADDRESS	CITY	STATE	ZIP
PHYSICIAN (P/ZI-PEDIATRIC INSUR)	DC	54711	LI			
PHYSICIAN ASSOCIATE	DC 37	00173	LI			
PHYSICIAN'S ASSOCIATE	DC 37	52700	LI			
PHYSICIST	DC 37	22015	H7			
PILOT	MEBA	70312	PC			
PIPE LAYING INSPECTOR	LOCAL 237	33415	AC			
PLACEMENT DIRECTOR	P S C	04102	DO			
PLAN EXAMINER (BUILDINGS)	DC 37	22410	H7			
PLANNER	DC 37	22115	H7			
PLANNING & OPERATIONS OFFICER (CD)	CWA	22113	CJ			
PLASTERER	LOCAL 237	92235	AC			
PLASTERING INSPECTOR	ABI	33515	ME			
PLAYGROUND ASSISTANT	DC 37	60405	FC			
PLUMBING INSPECTOR	ABI	33615	ME			
PODIATRIST (P/Z)	DC	53011	HJ			
POLICE ADMINISTRATIVE AIDE	DC 37	10144	JY			
POLICE OFFICE ASSOCIATE (FEA-W)	DC 37	03558	JY			
POLICE OFFICE ASSOCIATE (CITA)	DC 37	03495	JX			
POLICE OFFICE ASSOCIATE (FEA)	DC 37	03304	JX			
POLICE TRAINEE	PEA	70201	CJ			
POLICEWOMAN	PRA	70211	CJ			

FORM C

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

CIVIL APPEAL PRE-ARGUMENT STATEMENT

(To be filed by appellant with Clerk of Court of Appeals and served on
other parties within ten days after filing notice of appeal.)

CASE TITLE (Complete)

BERALDINE L. ACMA, and ARLENE M. EGAN, each
individually and on behalf of all others simi-
larly situated,

Plaintiffs,

-against-

ABRAHAM D. BEAUM, etc., MICHAEL J. CODD, etc.,
THE CITY OF NEW YORK, etc.,

Defendants.

COUNSEL NAME
FOR APPELLANTSW. BERNARD RICHLAND
CORPORATION COUNSEL

ADDRESS

MUNICIPAL BUILDING
NEW YORK, N.Y. 10007

Is this a cross appeal

YES

NO

TELEPHONE

566 - 6377

FOR APPELLEES

MURRAY A. GORDON, P.C.

666 THIRD AVENUE
NEW YORK, N.Y. 10017

661 - 7900

(Check One Box Only)

NATURE OF SUIT				METHOD OF DISTRICT COURT DISPOSITION	
CONTRACT	TORTS	CIVIL RIGHTS	ACTS UNDER STATUTES	PROPERTY RIGHTS	
☐ INSURANCE	☐ PERSONAL INJURY	☐ CIVIL RIGHTS	☐ ACTS UNDER STATUTES	☐ PROPERTY RIGHTS	☐ JUDGMENT BEFORE TRIAL
☐ MARINE	☐ DEFAMATION	☐ LABOR	☐ LABOR	☐ LABOR	☐ SUMMARY JUDGMENT
☐ MILLER ACT	☐ REAL ESTATE	☐ LABOR	☐ LABOR	☐ LABOR	☐ DISMISSAL
☐ CONTRACTS	☐ REAL ESTATE	☐ LABOR	☐ LABOR	☐ LABOR	☐ OTHER
☐ RECORDS OF	☐ REAL ESTATE	☐ LABOR	☐ LABOR	☐ LABOR	☐ PARTIAL SUMMARY JUDGMENT
☐ OTHER	☐ REAL ESTATE	☐ LABOR	☐ LABOR	☐ LABOR	☐ COURT TRIAL
☐ OTHER	☐ REAL ESTATE	☐ LABOR	☐ LABOR	☐ LABOR	☐ JURY TRIAL
☐ OTHER	☐ REAL ESTATE	☐ LABOR	☐ LABOR	☐ LABOR	☐ DURING TRIAL
☐ OTHER	☐ REAL ESTATE	☐ LABOR	☐ LABOR	☐ LABOR	☐ APPEAL FROM ORDER
☐ OTHER	☐ REAL ESTATE	☐ LABOR	☐ LABOR	☐ LABOR	☐ PRELIMINARY INJUNCTION
☐ OTHER	☐ REAL ESTATE	☐ LABOR	☐ LABOR	☐ LABOR	☐ CLASS ACTION
☐ OTHER	☐ REAL ESTATE	☐ LABOR	☐ LABOR	☐ LABOR	☐ AMENDED ANSWER
☐ OTHER	☐ REAL ESTATE	☐ LABOR	☐ LABOR	☐ LABOR	☐ ENFORCE SETTLEMENT
☐ OTHER	☐ REAL ESTATE	☐ LABOR	☐ LABOR	☐ LABOR	☐ COUNSEL FEES
☐ OTHER	☐ REAL ESTATE	☐ LABOR	☐ LABOR	☐ LABOR	☐ STAY
☐ OTHER	☐ REAL ESTATE	☐ LABOR	☐ LABOR	☐ LABOR	☐ OTHER

APPROXIMATE SIZE OF RECORD

NUMBER OF EXHIBITS

HAS TRANSCRIPT BEEN MADE?

YES

NO

BRIEF DESCRIPTION OF NATURE OF CASE AND RESULT BELOW

Sex discrimination suit brought under Title VII by laid-off female police officers seeking, inter alia, reinstatement with back pay. Plaintiffs granted partial summary judgment and injunctive relief.

ISSUES PROPOSED TO BE RAISED ON APPEAL

Laches, statutes of limitations, and subject-matter jurisdiction.

Exhibit E

I, Attorney for the Appellant, hereby certify that satisfactory arrangements have been made with the court reporter for payment of the cost of the transcript (FRAP 10 (b)). (Check one box)

☐ (1) have already ordered the transcript to be prepared OR☐ (2) will order it to be prepared at the time required by the Staff Counsel in the implementation of the Civil Appeals Management Plan

COUNSEL'S SIGNATURE

FOR APPELLANTS

W. BERNARD RICHLAND

DATE September 16, 1976

AD40

AFFIDAVIT OF JUDITH LEVITT
IN OPPOSITION TO MOTION
FOR STAY PENDING APPEAL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- - - - -x

BERALDINE L. ACHA and ARLENE M. :
EGAN, each individually and on :
behalf of all others similarly :
situated, :

Plaintiffs, :

-against- :

ABRAHAM D. BEAME, individually :
and in his capacity as Mayor of :
the City of New York, MICHAEL J. :
CODD, individually and in his :
capacity as Police Commissioner :
of the New York City Police :
Department, and THE CITY OF :
NEW YORK, as a public employer, :

Defendants. :

- - - - -x

AFFIDAVIT IN OPPOSITION
TO PLAINTIFFS' MOTION
FOR A STAY PENDING APPEAL

Docket No. 77-6119

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JUDITH A. LEVITT, being duly sworn, deposes and
says:

1. I am an Assistant Corporation Counsel in the
office of W. BERNARD RICHLAND, Corporation Counsel of the City
of New York, and am fully familiar with the facts in this
action. I submit this affidavit in opposition to plaintiffs'

motion for a stay directing the hiring of eleven class members pending determination of the instant appeal from the Opinion and Order of the Honorable Kevin Thomas Duffy, United States District Judge, dated July 28, 1977. The order of the District Court vacated a partial summary judgment in favor of the plaintiffs, denied plaintiffs' application for an injunction and denied defendants' motion for summary judgment without prejudice to renewal.

2. On June 25, 1975, the named plaintiffs herein, Acha and Egan, filed complaints with the Equal Employment Opportunity Commission and the New York City Commission on Human Rights alleging that the proposed layoffs by the Police Department were discriminatory against women in that they perpetuated the effects of defendants' prior discriminatory hiring practices.

3. On June 26, 1975, plaintiffs commenced the instant action, predicated jurisdiction upon 42 U.S.C. §2000e, et seq. ("Title VII") and 42 U.S.C. §1983, on behalf of themselves and all female police officers who were about to be laid off. Plaintiffs alleged that the proposed layoffs were discriminatory in that they perpetuated the effects of the past hiring practices, i.e. the administration of separate

examinations for the positions of patrolman and/or trainee and policewoman through 1969. Between 1964 and 1969, approximately 17 examinations were given for the positions of patrolman and/or trainee. During that same period, two examinations, one in 1964 and one in 1969, were given for the position of policewoman. Each of the plaintiff class members had taken and passed the examination for policewoman given in 1969.* They alleged that had they been permitted to take the examinations given for the positions of patrolman and/or trainee, they would have been hired at an earlier date and therefore would have accrued sufficient seniority to withstand the layoffs in June, 1975.

4. Plaintiffs moved for a preliminary injunction enjoining the intended layoffs. Defendants opposed the application on the grounds that the layoffs were immune from challenge in that they resulted from the application of a bona fide neutral seniority system within the meaning of section 703(h) of Title VII. By Opinion and Order dated July 1, 1975,

*Plaintiffs allege that an additional 38 female police officers who had taken and passed the 1964 policewoman's examination are also members of the class. These 38 women were initially laid off on June 30, 1975 but the lay-off order was subsequently rescinded and they were restored to their positions on or about July 4, 1975. The days they did not work were charged to accrued vacation leave.

the Honorable Kevin Thomas Duffy denied plaintiffs' application and dismissed the complaint. 401 F.Supp. 816 (S.D.N.Y. 1975).

5. Plaintiffs subsequently appealed to this Court from the Order and Judgment entered in the District Court on September 2, 1975. By opinion dated February 19, 1976, this Court reversed the order of the District Court and remanded for further proceedings. 531 F.2d 648 (2d Cir. 1976). In reversing, this Court held that the layoffs were not immunized by section 703(h) and that the seniority system itself was discriminatory because it perpetuated the effects of defendants' prior allegedly discriminatory hiring practices.

6. Pursuant to this Court's mandate, the plaintiffs moved for summary judgment before Judge Duffy on behalf of 54 class members. Defendants cross-moved for summary judgment on the grounds that (1) the facially neutral seniority system, pursuant to which plaintiffs were laid off, is immunized from challenge by section 703(h) of Title VII, 42 U.S.C. §2000e - 2(h), even though it may have perpetuated the effects of discriminatory acts which occurred prior to March 24, 1972, the effective date of Title VII as against municipalities; and (2) even assuming arguendo that

the alleged discriminatory hiring practices continued beyond the effective date of Title VII to the date plaintiffs were hired, plaintiffs failed to file a timely charge with the E.E.O.C. under 42 U.S.C. §2000e - 5(e) and are therefore barred by the statute of limitations.* Defendants further asserted that the complaint failed to state a cause of action under 42 U.S.C. §1983 and was barred by the applicable statute of limitations.

7. By opinion and order dated July 16, 1976, Judge Duffy granted plaintiffs' motion for partial summary judgment and denied defendants' cross-motion. In denying defendants' motion Judge Duffy relied exclusively on the decision of the United States Court of Appeals for the Seventh Circuit in Evans v. United Air Lines, 534 F.2d, 1247 (7th Cir. 1976) and held that plaintiffs' allegations of discrimination were continuing in nature and, therefore, not barred by the statute of limitations. In finding a continuing violation, Judge Duffy rejected defendants' contention that the alleged underlying discriminatory hiring practices occurred prior to the amendment of Title VII in 1972 and therefore Title VII

*The named plaintiffs, Acha and Egan, were hired on May 29, 1973 and June 25, 1973, respectively. Their complaints were filed in the E.E.O.C. on June 25, 1975, well beyond the 300-day statutory period.

could not be applied retroactively to remedy the pre-Act discrimination.

The Seventh Circuit in Evans held that the facially neutral seniority system utilized by United Airlines which perpetuated the effects of prior discriminatory acts was itself in violation of Title VII. It further held that the failure by United to credit plaintiff with constructive seniority to remedy the past discrimination constituted a continuing wrong and therefore her claim was not barred by the statute of limitations. In essence, the Court allowed a challenge to a bona fide neutral seniority system to resurrect a claim of discrimination barred by the statute of limitations. On May 31, 1977 the Supreme Court reversed the decision of the Seventh Circuit in Evans, 45 U.S.L.W. 4566 (Dkt. No. 76-333), holding that the failure to credit Evans with constructive seniority did not constitute a continuing violation of Title VII and that her underlying claim of discrimination was time-barred.

8. Defendants filed a notice of appeal from the judgment entered thereon on August 4, 1976. Defendants subsequently attempted to withdraw the appeal by letter, determining that it would be improper to burden this Court with piecemeal appeals in this litigation. However, because

no stipulation was filed withdrawing the appeal this Court dismissed the appeal for failure to docket by order dated October 7, 1976.

9. Pursuant to direction of this Court, Judge Duffy appointed a Special Master to determine which class members would have taken earlier examinations had they been available to females and therefore would have accrued sufficient seniority to withstand the layoffs. To date, the Special Master has held approximately 150 individual hearings on the claims of plaintiffs. She has rendered five interim reports containing findings as to 75 class members, of which 44 have been found entitled to some retroactive seniority, as early as 1964 and as late as 1973.

10. Those plaintiffs found entitled to retroactive seniority in the first and second interim reports have been reinstated in rehiring which have taken place over the course of the past year. Eleven additional women were found entitled to retroactive seniority in the third, fourth and fifth interim reports. It is those eleven women which plaintiffs seek to have rehired pending determination of the instant appeal.

11. Each of the hearings before the Special Master have solely concerned defendants' hiring practices through

1969. No plaintiff has, to date, adduced any evidence that she was the victim of discrimination after the effective date of Title VII and within the period within the statute of limitations either under Title VII or 42 U.S.C. §1983. Each of the findings of the Special Master in which plaintiffs have been found entitled to constructive seniority have been predicated solely upon a finding that the particular claimant would have, but for her sex, taken an examination before 1969 for appointment to the Police Department.

12. On May 31, 1977 the Supreme Court of the United States rendered decisions in United Air Lines v. Evans, 45 U.S.L.W. 4566 (Dkt. No. 76-333), and International Brotherhood of Teamsters v. United States, 45 U.S.L.W. 4506 (Dkt. Nos. 75-636, 75-672), which directly control the instant case. On June 15, 1977, defendants submitted a motion pursuant to Rules 56 and 60(b) for relief from the partial summary judgment entered on August 4, 1976 and renewing their prior cross-motion for summary judgment based on the intervening decisions of the Supreme Court.

13. Plaintiffs opposed defendants' motion and requested that the findings of the Special Master contained in the third, fourth and fifth interim reports be confirmed in part by Judge Duffy and further requesting that all

further rehiring by the Police Department be enjoined unless the seniority roster reflected the constructive seniority awarded by the Special Master.

14. By opinion and order dated July 28, 1977, Judge Duffy granted defendants' motion to vacate the partial summary judgment entered August 4, 1976, denied defendants' motion for summary judgment without prejudice to renewal and denied plaintiffs' application for an injunction requiring the hiring of the eleven women who were found by the Special Master to be entitled to retroactive seniority.

The opinion of Judge Duffy properly applied the decisions of the Supreme Court in Teamsters and Evans to the facts presented herein.

Judge Duffy held, based upon Teamsters, that plaintiffs may not predicate a Title VII claim upon the layoffs in June, 1975 although they may have perpetuated the effects of pre-Act discrimination, i.e., the administration of separate exams for males and females. He stated:

"Pre-Act discrimination which is perpetuated by a neutral seniority system is immunized from Title VII attack by reason of section 703(h). 45 U.S.L.W. at 4512-14. To fall outside the immunity afforded to a bona fide seniority system, plaintiffs must show more than the system's failure to correct pre-Act discrimination."

Opinion, pg. 13.

He further held, based upon Evans, that the failure to credit plaintiffs herein with retroactive seniority to remedy the alleged pre-Act discrimination does not constitute a continuing wrong under Title VII, and plaintiffs must, therefore, demonstrate some discriminatory hiring practice which occurred within 300 days prior to the filing of charges in the E.E.O.C. on June 25, 1975 in order to set forth a viable claim under Title VII.

Judge Duffy concluded:

"Thus, the June 1975 layoffs pursuant to a facially neutral seniority system were immunized and cannot be the basis for a Title VII violation. Therefore, plaintiffs are effectively restored to their pre-summary judgment status and to succeed must establish a prima facie case of a Title VII violation which occurred after the effective date of the Act and within the period of the statute of limitations. Thereafter, any class member who was not hired until after March 24, 1972 and, but for her sex would have been hired earlier than her actual appointment date, is entitled to a seniority revision."

Opinion, pp. 13-14.

Additionally, Judge Duffy held that any plaintiff who successfully meets the standards set forth above may be awarded constructive seniority to a date not earlier than March 24, 1972, the effective date of Title VII.

Teamsters, 45 U.S.L.W. at 4514. It must be noted that no plaintiff with a seniority date of March 24, 1972 would have withstood the layoffs.

15. By notice of appeal dated August 2, 1977, plaintiffs appealed from so much of Judge Duffy's order which granted defendants' motions and denied plaintiffs' motion for an injunction. On August 2, 1977, plaintiffs moved in the District Court for an order staying the intended rehiring on August 5, 1977 of approximately 400 police officers pending this appeal unless the eleven class members were included in such rehiring. On August 4, 1977, Judge Duffy denied the motion for a stay except to the extent that he ordered defendants to hold 11 positions open until August 16, 1977, the return date of the instant motion.

16. On August 5, 1977, the Police Department rehired approximately 400 police officers to permanent positions. An additional 45 police officers were hired under provisional grants. Included in the provisional hirings, based on their actual appointment dates, were two of the eleven women on whose behalf the instant motion is made, Kathleen Jappe and Theodora Moscatelli. Therefore, this motion should be limited to the nine remaining class members.

17. In support of the instant motion for a stay, plaintiffs contend: (1) that the nine plaintiffs will suffer irreparable injury if not reinstated at this time; (2) the District Court erred in granting defendants' motion pursuant to Rule 60(b), Fed.R.Civ.P.; and (3) the District Court improperly applied the decisions in Teamsters and Evans. Each contention will be discussed separately.

18. Plaintiffs allege that the nine class members will be irreparably harmed if not reinstated because defendants have contended that back pay should be denied on the facts presented herein and the law. At the same time, however, plaintiffs insist that they seek to enjoin the hirings, rather than seeking an order affirmatively directing their reinstatement. Of course, an injunction against hirings will not prevent the loss of income to plaintiffs, so it is clear that Judge Duffy was correct in characterizing their request for relief as affirmative.

19. Furthermore, the affidavit of plaintiffs' counsel is the only indication this Court has of "irreparable harm." As set forth by Judge Duffy, to hire any of these women will cause another incumbent with greater established

seniority rights to be displaced. The harm which those incumbents who would not be rehired would suffer in the event plaintiffs are subsequently found not entitled to any relief, is at least as great as the harm which these nine plaintiffs may suffer. Indeed, plaintiffs have argued at length their entitlement to back pay. The incumbent who is not rehired would have no claim to back pay for the period he or she is denied employment.

20. It should be noted that, in addition to the two women who were rehired on August 5, 1977, another claimant, Jane Waye, will be called for a provisional appointment on August 26, 1977. Police Department records and the transcripts of the hearings before the Special Master reflect the following information concerning the remaining eight plaintiffs:

(1) Vanina Maffia was employed as of the date of her hearing before the Special Master. Furthermore, she declined a provisional CETA appointment on April 26, 1977;

(2) Patricia Cardone was not employed as of the date of her hearing but failed to appear for a provisional CETA appointment on April 28, 1977;

(3) Martina Guidone was employed as of the date of her hearing and failed to appear for a provisional CETA

appointment on April 26, 1977;

(4) Carol Kane was employed as of the date of her hearing and was found not qualified for a provisional CETA appointment on May 3, 1977;

(5) Carol Conry was employed as of the date of her hearing and declined a provisional CETA appointment on April 25, 1977;

(6) Mary Jane Stagno was unemployed as of the date of her hearing and failed to appear for a provisional CETA appointment on April 26, 1977;

(7) Marie Finnamore was unemployed as of the date of her hearing and declined a provisional CETA appointment on April 25, 1977; and

(8) Nancy Howells was unemployed as of the date of her hearing and failed to appear for a provisional CETA appointment on April 26, 1977;

Thus, four of the claimants apparently have other employment at this time and the remaining four, either declined or failed to appear for, provisional appointment. Plaintiffs cannot say, therefore, that equity requires their reinstatement at this time in lieu of incumbents with greater established seniority rights.

21. The plaintiffs have not shown a probability of success on this appeal. They contend that the District Court erred in its application of Teamsters and Evans to the facts herein. However, a simple reading of both cases indicates that they are applicable hereto. Indeed, Justice Marshall, in his dissenting opinion ^{in Teamsters,} indicates that the majority opinion overturns the holding of this Court herein. 45 U.S.L.W. at 4520, fn. 2.

It should be noted that upon this Court's remand, after the first appeal, the plaintiffs in moving for summary judgment relied on the Seventh Circuit's opinion in Evans which was reversed by the Supreme Court.

22. Teamsters held that a facially neutral seniority system is immunized from challenge under §703(h) of Title VII even though it may perpetuate the effects of discrimination which occurred prior to the effective date of the Act. The layoffs challenged herein were the result of the routine application of a bona fide neutral seniority system.

Plaintiffs again argue, as they did in the District Court, that the Teamsters holding is not applicable to municipalities. They argue that the 1972 amendment to Title VII which included section 703(h) was not intended to

immunize seniority systems which perpetuated pre-Act discrimination since discrimination by a public employer was always prohibited by the Fourteenth Amendment and 42 U.S.C. §1983.

Plaintiffs' argument is only an attempt to take one part of Title VII and one part of 42 U.S.C. §1983, tack them together, and create a right and a remedy. However, nothing in the legislative history of the Title VII amendments in 1972 points to such result. Vested seniority rights of public employees at the time of the amendments were not deemed entitled to less protection than those afforded private employees in 1965. Had Congress intended a different result, they would have eliminated the section 703(h) exemption from the amendments.

Furthermore, the Supreme Court in the later case of Hazelwood School District v. United States, 45 U.S.L.W. 4882 (June 27, 1977), cited Teamsters with approval as against municipal employees without qualification. And this Court has remanded The Guardians Association of the New York City Police Department, Inc., et al. v. Civil Service Commission of the City of New York, et al., Dkt. No. 77-7145 (2d Cir., June 21, 1977), for further proceedings in light of Teamsters.

Additionally, plaintiffs' argument overlooks the holding of the Supreme Court in Evans. There the Court stated that a facially neutral seniority system is immunized from challenge under §703(h) even if it perpetuates the effects of post-Act discrimination. They held that the underlying discriminatory act must be the basis for a timely charge in the E.E.O.C. Thus, if §703(h) immunizes neutral seniority systems which perpetuate the effects of post-Act discrimination, it certainly immunizes neutral seniority systems which perpetuate the effects of acts which are alleged to have been discriminatory under 42 U.S.C. §1983 and which occurred prior to the effective date of Title VII.

23. Plaintiffs also contend that the District Court erred in applying Teamsters herein, in that the layoffs were not the application of a facially neutral seniority system. They contend that the patrolman and policewoman lists were improperly merged in 1975 for the purpose of the layoffs. It is unclear upon what facts plaintiffs rely in support of this allegation. As the record clearly indicates, the facts are as follows.

Section 80 of the New York Civil Service Law requires that incumbents holding the same or similar positions be laid off in inverse order of seniority.

In January, 1972, the Police Department began assigning women to full patrol duties. Beginning in January, 1973, when the three-year hiring freeze was lifted, all women who were appointed were given the identical qualifying tests, training and assignments as given to men. In February, 1973, the budget lines for patrolman and policewoman were merged into a single line. See Exhibit A annexed hereto. In April, 1973, the positions of policewoman and patrolman as set forth in the New York City Administrative Code were abandoned by the Department of Personnel and the Police Commissioner and the two positions were merged into the single position of police officer. See Exhibit B annexed hereto. In December, 1973, a single examination was administered for the position of police officer and appointments were made therefrom without regard to sex. All those holding the position of police officer had identical benefits, duties and promotional opportunities.

Thus, although the class members herein were appointed from a list established for the position of policewoman, they at all times had the same benefits and performed the same duties as patrolmen. Since the positions had been merged for all purposes in 1973, it was required and proper for the seniority lists to be unified for the purpose of determining the order of layoff under section 80 of the Civil Service Law.

24. In fact, the record herein clearly demonstrates that defendants have in no way discriminated against plaintiffs at least since the effective date of Title VII.

25. On October 25, 1969, Examination Nos. 9080 and 9081 were administered for the positions of patrolman and/or trainee and policewoman, respectively. Of the 437 class members, 399 took and passed Examination No. 9081 and were subsequently appointed therefrom. The remaining 38 class members, as alleged by plaintiffs, had taken the 1964 policewoman's examination and were appointed in or about 1969.

26. In approximately February, 1970, a freeze on hiring was imposed on the Police Department. No appointments were made to the positions of patrolman or policewoman until January, 1973, when the freeze was lifted. However, on May 8, 1970, approximately 125 trainees were appointed to the Police Department from List No. 9080, most of whom ripened into patrolmen during the freeze period upon attaining the age of 21. No further appointments to the position of trainee have been made since that date.

27. When hiring resumed in January, 1973, there were then eight eligible lists in existence from which

appointments were to be made, which included over 24,000 eligibles:

<u>Examination No.</u>	<u>Date Administered</u>
7065	May 11, 1968
8046	July 20, 1968
8108	January 18, 1969
9019	April 5, 1969
9049	September 2, 1969
9080	October 25, 1969
9081	October 25, 1969
0013	August 24, 1970

28. Prior to the freeze period, no appointments had been made from Examination Nos. 9019, 9049, 9080, 9081 and 0013, except 125 trainees who were appointed on May 8, 1970 as indicated in paragraph 4. herein. The eligible lists from Examination Nos. 7065 and 8046 had been fully canvassed prior to the freeze, and Examination No. 8108 had been partially canvassed prior to the freeze. Earlier lists are entitled to priority under the Civil Service Law and Rules and Regulations.

29. In 1973, appointments were highly accelerated so that rigid adherence to list preference was not possible. It was generally adhered to in determining the order in which eligibles were assigned for pre-appointment investigation, except that women and minorities were given priority.

30. The following chart indicates the number of appointments during 1973 from each list which had not been used before the freeze period:

Appointment Dates	9019*	9049*	Examination Nos.		0013
			9080	9081	
1/29/73	0	0	0	6	0
2/26/73	3	0	0	20	0
3/26/73	2	0	0	18	0
4/30/73	18	2	0	19	0
5/29/73	16	0	0	102	0
6/25/73	17	61	0	56	0
7/30/73	8	5	80	71	0
8/31/73	11	10	179	63	0
10/1/73	9	8	120	28	261
10/29/73	4	4	100	41	210
11/19/73	4	8	70	22	108
12/17/73	8	4	49	26	74

* These appointments do not include those with preferences or those who were no longer in the Police Department in June, 1975.

31. As the above chart indicates, after the freeze was lifted 227 females were appointed from List No. 9031 before any males were appointed from the companion List No. 9030. Indeed, many females were appointed before males from earlier lists. An additional 35 females were appointed during 1974 who were, generally, eligibles who had declined earlier appointment or who had significant problems in their investigation. All females from List No. 9031 who were qualified and available were appointed during 1973. In October, 1974, a hiring freeze was again imposed on the Police Department.

32. Therefore, the plaintiffs cannot show any probability of success on the merits and, as demonstrated above and indicated in the opinion of Judge Duffy, the balance of hardships do not lie in favor of plaintiffs on whose behalf the stay is sought. Indeed, the eleven plaintiffs in question are in no different position than any other class member who has not to date come forward for a hearing before the Special Master. In accordance with the decision in Teamsters, the findings of the Special Master that those eleven were the victims of discrimination prior to 1969 are a nullity.

33. Finally, plaintiffs contend that the District Court erred in granting defendants' motion pursuant to Rule 60(b) to vacate the partial summary judgment entered August 4, 1976. They argue that, since the District Court certified the judgment as final under Rule 54(b) and this Court subsequently dismissed defendants' appeal therefrom for failure to docket, Rule 60(b) cannot be used to circumvent the failure to appeal a final judgment.

34. Plaintiffs appear to contend that, defendants should be in a worse position, having failed to prosecute an appeal from the entry of partial summary judgment, than if they had taken an appeal and the judgment had been affirmed. In fact, they appear to contend that Rule 60(b) is never applicable to allow a party to take advantage of a supervening change in law. Plaintiffs' theory is without support.

35. The cases cited by plaintiffs are inapposite on the facts herein.

In Wallace Clark & Co., Inc. v. Acheson Industries, 394 F. Supp. 393 (S.D.N.Y. 1975), aff'd 532 F.2d 846 (2d Cir. 1976), cert. den. 425 U.S. 976 (1976), Judge Weinfeld denied plaintiff's motion pursuant to Rule 60(b)(5) and (6) since the motion asked for relief from a consent judgment in a prior action and the consent judgment had been entered into three years after the decision of the Supreme Court on which plaintiff grounded his motion.

Ackermann v. United States, 340 U.S. 193 (1950) did not involve a change in controlling law which justified relief from the judgment. In fact, the petitioner did not - allege any factor which had changed since the entry of judgment.

In Polites v. United States, 364 U.S. 426 (1960), the Court specifically did not reach the question of whether it would affirm Ackermann and refused to grant relief solely upon the determination that the intervening decisions were not controlling.

Schildhaus v. Moe, 335 F.2d 529 (2d Cir. 1964), did not involve any intervening change in controlling decisional law. The plaintiff there had taken an appeal from the District Court's judgment, but had not appealed from the findings of fact. The Court of Appeals stated as dictum in its opinion modifying the judgment, that were the findings of fact open for review, the Court would find that they lacked support in the record. Subsequently, the defendant made a motion for relief from the judgment based upon the dictum of the Court of Appeals. The Court of Appeals, on the subsequent appeal, held the motion improper since no facts had changed since the district judge had made his initial determination. Id. at 530.

36. A motion to vacate a prior order or judgment pursuant to Rule 60(b) is addressed to the sound discretion of the District Court. Title v. United States, 263 F.2d 28, 31 (9th Cir.), cert. den. 359 U.S. 989 (1959). In view of the equities involved herein, as reviewed by Judge Duffy in his Opinion (pg. 8), and the exercise of "active and continuing jurisdiction over the suit" by the District Judge, the grant of

the motion in no way constituted an abuse of discretion.

37. Furthermore, although the District Court, upon granting partial summary judgment certified the judgment under Rule 54(b), we submit that the judgment was not final within the meaning of 28 U.S.C. § 1291. Therefore, rather than prosecuting piecemeal appeals, defendants did not docket the appeal. The partial summary judgment did not determine the claims for relief of any party, and the constructive seniority award for 38 class members was subject to modification after hearings before the Special Master. See Sears, Roebuck & Co. v. Mackey, 351 U.S. 427 (1956); Cold Metal Process Co. v. United Engineering & Foundry Co., 351 U.S. 445 (1956). The District Court has full plenary power to grant relief from an interlocutory judgment or order at any time until entry of final judgment 7 Moore's Federal Practice ¶ 60.20.

In view of the substantial change in the law in this area by the decisions of the Supreme Court in Evans and Teamsters, Judge Duffy properly applied the current law to the factual situation before him. To do otherwise would have been an abuse of discretion by the District Court.

WHEREFORE, it is respectfully submitted that
plaintiffs' application for a stay pending appeal should be
denied in its entirety.

Dated: New York, New York

August 11, 1977

Judith A. Levitt

Judith A. Levitt

Sworn to before me this
11th day of August, 1977

Paul L. Brennan
Notary Public

PAUL L. BRENNAN
Notary Public, State of New York
No. 52-0406480
Qualified in Suffolk County
Commission Expires March 30, 1978



POLICE DEPARTMENT
NEW YORK, N. Y. 10014

January 22, 1973

The Honorable
John V. Lindsay, Mayor
City of New York
City Hall
New York, New York 10007

Attention: Mr. David A. Grossman
Director of the Budget

Dear Mr. Mayor:

I respectfully request that the expense budget of this department for 1972-1973 be modified to the extent and in the manner designated in the attached schedule.

For approximately the last nine months this Department has been using a limited number of policewomen on patrol performing the same range of duties as their male counterparts. The program has been extremely successful. We intend to expand it. The recently formed Rape Analysis Unit is but another example of the increasing use of policewomen in active enforcement roles.

The request to combine the lines also stems from an effort by this Department to follow up on recommendations made in a report to Mayor by the Womens Advocacy Committee in August 1972, which among other things recommended elimination of the separate quotas.

No funds are necessary to implement this modification.

Sincerely,

Patrick V. Murphy
PATRICK V. MURPHY
POLICE COMMISSIONER

Function 48

AD67

Dept.

056

056

AD68

Effect

RJ Regular Position Line
 PD Per Diem Position Line
 AL Allowance Line
 LS Lump Sum Line
 PR Professional Services
 OT Overtime Line
 OTS Overtime Supplement Line
 RV Revenue Line
 AC Actual Line
 HD Holding Code Line

CITY OF NEW YORK
 NOTICE OF PROPOSED CHANGE IN
 APPROPRIATION SCHEDULE
 FOR FISCAL YEAR 1972/1973

DEPARTMENT POLICE

CERTIFICATE NO. 056-PA-22

DATE January 22, 1972

PAGE 1 OF 1

BUDGET					Type of Account	Title Code	No. of Pos. +/- Only	Salary Range		Sched. Amt. +/- Only	Title or Account
Pt.	Pgm. Code	Sub-Pgm.	Line	Cost Center				Minimum	Maximum		
6	19	78	0027A	002		70210/ 70211	+290	\$11,200	\$14,700	\$+ 4,036,872	Patrolman / Policewoman
6	19	78	0032A	002		70211	-290	\$11,200	\$14,700	- 4,036,872	Policewoman

Effective Date

Agency Approval (MX)(MW)

Bureau of the Budget/Office of the Mayor

Validated (MW) _____ Approved (MA)(MAN) _____

0-2-73

[Handwritten signature]

POLICE DEPARTMENT
CITY OF NEW YORK

April 23, 1973

TO ALL OFFICERS:

Subject: CHANGES IN RANK AND COMMAND DESIGNATIONS

1. The following rank and command designations are changed effective 4/24/73:

RANK

Chief Inspector
Chief of Patrol
Assistant Chief Inspector
Deputy Chief Inspector
Patrolman
Policewoman

NEW DESIGNATION

Chief of Operations
Chief of Field Services
Assistant Chief
Deputy Chief
Police Officer

COMMAND

Patrol Services Bureau
Patrol Borough
Patrol Division
Patrol Precinct
Highway Patrol Precinct
Harbor Patrol Unit

NEW DESIGNATION

Field Services Bureau
Field Services Area
Division
Precinct
Highway Unit
Harbor Unit

(Examples of the new designations are: Manhattan North Area, 9th Division, 103 Precinct)

2. These new designations will more accurately describe the actual responsibilities of the ranks and the Patrol Bureau commands involved.

3. Although patrol is a very important basic function, it does not encompass the full range of field responsibilities of the Department's largest command. It is now recognized that the uniformed field service officer, in addition to preventing and controlling crime and providing services requiring rapid response, must also be encouraged to perform any other necessary activities, such as:

- a. Information gathering and exchange
- b. Obtaining citizen cooperation
- c. Maintaining existing policies, laws, and regulations, etc.
- d. Crime analysis
- e. Planning
- f. Training
- g. Working relationships with other divisions of the Department and other agencies

4. The following standards for the police profession are hereby adopted:

- a. perceive themselves as professionals responsible for providing the highest possible level of safety and police services in their area of responsibility (sector, SRT area, precinct, etc.).
- b. accept their responsibilities with the highest sense of the professional ideal.
- c. are accepted by management as professional colleagues to be respected for their professional competence and status.
- d. are permitted to participate in management by involvement in policy development, planning and decision making.

5. This order will be thoroughly discussed by supervisors with all Field Services Bureau personnel at roll calls and other appropriate times to introduce and reinforce the professional concept.

6. Any order that conflicts with the information conveyed herein is revoked. The Department Manual will be amended subsequently.

BY DIRECTION OF THE POLICE COMMISSIONER

DISTRIBUTION:
All Commands

AFFIDAVIT OF PAUL L. BRENNAN
IN OPPOSITION TO MOTION
FOR STAY PENDING APPEAL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

BERALDINE L. ACHA and
ARLENE M. EGAN, each individually
and on behalf of all others
similarly situated,

Plaintiffs,

-against-

ABRAHAM D. BEAME, individually
and in his capacity as Mayor of the
City of New York, MICHAEL J. CODD,
individually and in his capacity
as Police Commissioner of the New
York City Police Department, and
THE CITY OF NEW YORK, as a public
employer

Defendants.

-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

PAUL L. BRENNAN, being duly sworn, deposes and says:

1. I am a Lieutenant in the New York City Police Department assigned as an attorney in the Legal Division, and one of the attorneys for the defendants-appellees in the above entitled action. I submit this affidavit in opposition to the motion of plaintiffs-appellants for a stay pursuant to Rule 8. Federal Rules of Appellate Procedure, preventing the rehire of police officers from a Preferred List which does not reflect the retroactive seniority to which eleven (11) class members were found to be entitled in the Third, Fourth and Fifth Interim Reports of the Special Master.

2. Pursuant to a ruling of Judge Kevin T. Duffy, the Police Department has refrained from filling eleven (11) authorized vacancies, which would have been filled on August 5, 1977, until August 16, 1977, the return date of the instant motion.

3. Due to a fiscal crisis in the City of New York, the Police Department was required to lay off 2,864 police officers on June 30, 1975 and to accumulate vacancies by attrition at the rate of approximately 1,500 per year, so that the uniform force of the department is currently under its pre-June, 1975 strength by more than 5,000 officers. There is an obvious need to hire police officers as rapidly as fiscal conditions and accessibility of grant programs permit.

4. The lay-off in June, 1975, resulted in the establishment of a Preferred List by operation of Sections 80 and 81 of the New York State Civil Service Law. Section 80 provides for a "last hired, first fired" lay-off system, and Section 81 provides for a preferred list for reinstatement of those laid-off in order of original appointment.

5. Since the lay-offs, approximately 1,065 laid-off police officers have been rehired to the Police Department from the Preferred List under various federal grants and available tax revenue funds. Appointments under the federal grants, because they are temporary, are considered provisional and failure to accept such appointments does not carry with it the consequence of removal from the preferred list. Reinstatements under tax levy funds, however, are permanent and failure to accept appointment or disqualification result in removal from

the preferred list. In filling grant positions, the list is canvassed in rank order, but only prospectively. However, in filling permanent positions, the offers are made in strict list order, regardless of whether the eligible has already been appointed provisionally, has failed to accept a provisional appointment, or has been passed over for a provisional appointment. The provisional appointments thus converted to permanent tax-levy budget lines, are then back-filled through further prospective canvass of the preferred list.

6. With the 400 tax-revenue appointments made on August 5, 1977, there have now been approximately 640 laid-off police officers restored to permanent lines, and approximately 400 in provisional federally-funded positions. An additional 230 provisional appointments are currently scheduled to be made on or after August 26, 1977 to back-fill positions funded under the Comprehensive Employment and Training Act (C.E.T.A.) which had been converted to tax-levy positions on August 5, 1977.

7. C.E.T.A. regulations contain requirements that only persons who are residents of the City of New York and who have been unemployed for fifteen (15) days at the time of application, are eligible for hiring under that program. This has resulted in a substantial number of disqualifications, declinations and pass-overs.

8. The canvass for provisional appointments has currently reached Preferred List No. 2015 out of a total of 2,864, so that there remain 849 laid-off police officers who have yet to be offered any opportunity for re-hire. It is anticipated that an additional 100-200 names will be canvassed in order to fill the

expected deficiencies due to disqualification in the August 26, 1977 hirings, mentioned in paragraph "6" above.

9. The eleven (11) class members on whose behalf the motion for a stay pending appeal has been made, together with their respective dates of original appointment and Preferred List numbers, are as follows:

<u>PREFERRED LIST</u>	<u>NAME</u>	<u>DATE OF APPOINTMENT</u>
723	Theodora Moscatelli	2/26/73
768	Kathleen L. Jappe	3/26/73
871	Nancy Howells	5/29/73
897	Vanina F. Maffia	5/29/73
903	Marie Finamore	5/29/73
941	Martina Guidone	5/29/73
952	Mary Jane Stagno	5/29/73
1077	Carol Conry	6/25/73
1337	Patricia Cardone	8/31/73
1618	Carol Kane	10/29/73
1836	Jane Waye	11/19/73

10. Police Department records indicate the following with respect to these class members:

a. Theodora Moscatelli and Kathleen L. Jappe were both rehired in provisional appointments on August 5, 1977, and Jane Waye is among the group presently being processed for appointment on August 26, 1977.

b. Carol Kane was considered for a C.E.T.A. position and was found not qualified on May 3, 1977.

c. Vanina Maffia, Marie Finamore and Carol Conry were all sent notices of availability of C.E.T.A. positions in April

of 1977, and all declined to accept the positions.

d. Nancy Howells, Mary Jane Stagno, Martina Guidone and Patricia Cardone were all sent notices of the availability of C.E.T.A. positions in April, 1977, and all failed to appear to make application for such positions.

11. Based upon the transcripts of the hearings of claimants Maffia, Guidone and Cardone, they may have failed to qualify for C.E.T.A. hirings by reason of residency outside the City of New York. In the case of Conry, she may have been employed and thus not qualified under C.E.T.A. regulations. However, claimants Howells, Stagno and Finamore all appear to have met at least the criteria of residency and unemployed status and no reason has been offered for their failure to accept reinstatement under the federal grant.

12. Defendants-appellees renewed their motion for summary judgment on June 15, 1977 relying principally on the decisions of the U.S. Supreme Court in International Brotherhood of Teamsters v. United States, 45 U.S.L.W. 4506 (May 31, 1977), and United Air Lines v. Evans 45 U.S.L.W. 4566 (May 31, 1977). Thereafter, and for the first time since the litigation commenced in June, 1975, plaintiffs mentioned a complaint of Alice McCain, apparently as a possible Title VII predicate for jurisdiction in the event the claims of all other class members were found to be time-barred under the reasoning of United Air Lines v. Evans.

13. Alice J. McCain was appointed a Police Officer in the New York City Police Department on March 25, 1974. She was laid-off on June 30, 1975. Ms. McCain took and passed

Examination No. 9081 for Policewoman on October 25, 1969, and placed number 1103 on the resulting list of eligibles. In August, 1973, she was called for an applicant screening interview and thereafter scheduled for a pre-appointment medical examination on September 13, 1973. Prior to the scheduled medical, the candidate advised the department that she was than seven (7) months pregnant and requested that her medical examination be postponed until six (6) weeks after the birth of her baby. (See Exhibits A & B). Sometime prior to February 6, 1974, Ms. McCain was notified and appeared for her medical examination and the processing of her application resumed (See Exhibit C). She was appointed with the March 25, 1974 group entering the Police Academy.

14. In September, 1973, Ms. McCain filed a complaint with the Equal Employment Opportunity Commission alleging sex discrimination in that she was being denied appointment to the Police Department because she was pregnant, while males, so she believed, who were suffering temporary disabilities were not denied appointment. (See Exhibit D).

15. In or about January, 1974, an investigator for the E.E.O.C. initiated inquiries with the department concerning policies with respect to candidates who were temporarily disabled at the time of appointment. On information and belief, no further contact or communication was had between the City and the E.E.O.C. after April, 1974, and it was assumed that because the complainant had been appointed in the interim, the matter was closed.

16. In 150 hearings, 9,000 pages of transcripts, and numerous other pleadings, affidavits and memoranda, previously submitted in this action, there has been no allegation that any other class members were similarly situated as Ms. McCain. Moreover, a matter that has been permitted to remain idle for 39 months, if indeed it has not been effectively closed pursuant to 42 U.S.C. 2000e-5 (f)(1), is not likely to provide a bootstrap by which the Title VII claims of the class can survive the effect of the statute of limitations and the bona fide seniority system exemption of Section 703 (h).

WHEREFORE, as plaintiffs-appellants have failed to demonstrate the irreparable harm to the eleven (11) class members, or that the equities are balanced in their favor, and have failed to demonstrate the likelihood that they will succeed on the merits in reversing the decision of the Court below with respect to the Title VII claims, the motion for a stay pending the outcome of an appeal should be denied in all respects.

Paul L. Brennan
PAUL L. BRENNAN

Sworn to before me this
11th day of August, 1977.

Paul H. Hayes

CLERK OF COURT
U.S. DISTRICT COURT, S.D. New York
Southern District of New York
Commission Expires March 30, 1977

Dist. No. 100
Form No. 100

Investigation Unit
Employment Division
Old Slip & South St.
New York, N.Y. 10005

Form No. 35

APR 13, 1973
1973

From: Investigator, Investigation Unit, Employment Division.
To: Chief Surgeon
SUBJECT: INTERIM MEDICAL REPORT.

1. Alice Jaul McCain(WeePercell) is scheduled for pre-appointment medical examination in the near future. His/Her Character Investigation and/or preliminary screening has disclosed the following medical history which is submitted for the guidance of the Police Surgeons conducting the medical examination:

Reading Glasses

1965 Allergy from paint

PTL. RUGER, M. SHEA
INVESTIGATOR - I.U.E.D. 3
780 PRINCE ST. - RM. 304
481 BRIDGE STREET
BROOKLYN, N. Y. 11217

Received by:

Investigator

Medical Section

I.U.E.D. Squad No. _____

one
5/13

82. 12 only

Form No. 35

A

AD78

SURNAME **McGowan** FIRST NAME **Alfred** MIDDLE INITIAL **J** EXAMINATION NO. **9061** GROUP NO. **1105** POSITION NO. **PO-100000**
 HOME ADDRESS **29 Wagner Ave** CITY **Brooklyn** STATE **NY** ZIP CODE **11515** PHONE NO. **316-278-244**
 DATE OF BIRTH **6-1-1918** PLACE OF BIRTH **Brooklyn, NY** USMAV NO. **11515** NATURALIZATION DATE AND COURT **11-5-1949**
 TISSUE **RIGHT** **LEFT** **ARE THERE STRABISMUS** **YES** **NO**
 UPPER **4 7 6 5 4 3 2 1** UPPER **8 7 6 5 4 3 2 1** DENTAL SURGEON'S SIGNATURE
 LOWER **8 7 6 5 4 3 2 1** LOWER **8 7 6 5 4 3 2 1**

X-STRIKE OUT THOSE THAT ARE MISSING

O-CIRCLE THOSE THAT MAY BE RESTORED

URINALYSIS-SPECIFIC GRAVITY **1.015** WEIGHT **154** HEIGHT **5-5** WAIST **30** PULSE RATE **86** BLOOD PRESSURE **120/80**
 SYSTEMIC **120** DIASTOLIC **80**

VISION **RIGHT EYE 20/30** **LEFT EYE 20/30** REMARKS

HEARING **RIGHT EAR GOOD** **LEFT EAR GOOD** REMARKS

1. Appearance of sugar in urine	YES	NO	14. Apex beat in abnormal location	YES	NO
2. Appearance of albumen in urine			15. Any enlargement of the lymphatic glands		
3. Abnormal function or contour of joints			16. Any abnormality of the thyroid gland		
4. Physique or general physical contour other than good			17. Any evidence of syphilis or having had syphilis		
5. Deformities of the feet			18. Hydrocele, varicocele, hemorrhoids or penile scars		
6. Disease indication of the nose, tonsils or throat			19. Hernia or predisposition thereto		
7. Lungs abnormal or evidence of pulmonary disease			20. Any abnormality evident in the brain or nervous system		
8. Abnormality from auscultation or percussion			21. Has the brain or spinal cord ever been diseased		
9. Disease evidence of the heart or blood vessels			22. Reflexes: hyperactive, absent or abnormal		
10. Pulse rate other than rhythmic			23. Spine: abnormal posture, limitation of motion: lordosis, scoliosis, kyphosis, etc.		
11. Evidence of arterial or vascular disease			24. Are there present any perceptible effects of previous disease or injury in the heart, lungs, kidneys, nervous system, abdominal organs, or the skin, eyes, ears, limbs, etc.		
12. Abnormal heart sounds			25. Excessive use of stimulants or tobacco, if any		
13. Indications of cardiac enlargement					

Indicate by number any comments regarding the above

3-20-74 **Candidate** **P.O. Romano**

Evidence of Narcotic addiction

(Tip of Finger this End)

86-951

WE HEREBY CERTIFY THAT WE HAVE THIS DAY CAREFULLY AND THOROUGHLY EXAMINED THIS APPLICANT AND FIND THAT HE

[] IS QUALIFIED PHYSICALLY

[] IS NOT QUALIFIED PHYSICALLY

SURGEON'S SIGNATURE

[Signature]

STATE OF NEW YORK

COUNTY OF **NY**

216/174

Alfred J. McGowan

I, **Alfred J. McGowan**, being duly sworn, depose and say that I have read and understand the inquiries of the Medical Examiners touching my personal and family health, history, habits and antecedents, and that I am the person described in the above record of examination.

SWORN TO BEFORE ME

[Signature]
CHIEF CLERK

[Signature]
SIGNATURE OF APPLICANT

Roller print of Right Index Finger, to be taken prior to medical examination.

114-38-2422

AD79

WEIGHT		HEIGHT		TEMPERATURE		PULSE RATE		BLOOD PRESSURE		SPECIAL DIAGNOSTIC	
1		2		3		4		5		6	
1. Appearance of sugar in urine											
2. Appearance of albumen in urine											
3. Lungs abnormal											
4. Abnormality from auscultation or percussion											
5. Disease evidence of the heart or blood vessels											
6. Pulse rate other than rhythmic											
7. Evidence of arterial or vascular disease											
8. Abnormal heart sounds											
9. Indications of cardiac enlargement											
10. Apex beat in abnormal location											
11. Are there present any perceptible effects of previous disease or injury in the heart, lungs, kidneys, nervous system, abdominal organs, or the skin, eyes, ears, limbs, etc.											
12. Excessive use of stimulants or tobacco, if any											

REMARKS.

WE HEREBY CERTIFY THAT WE HAVE THIS DAY CAREFULLY AND THOROUGHLY EXAMINED THIS INDICATOR AND FIND THAT HE
 [] IS QUALIFIED PHYSICALLY
 [] IS NOT QUALIFIED PHYSICALLY

SURGEONS' SIGNATURES
 [Signature]
 [Signature]

NOTE: The Chief Clerk will return this form to the Chief Surgeon's office prior to the final medical examination of all probationary members of the force.

File No. _____
Exam. No. 1911
List No. 1101
App. No. _____

THE CITY OF NEW YORK
POLICE DEPARTMENT
240 CENTRE STREET
NEW YORK, N. Y. 10013

CL. 7 (Rev. 5-65)

Date 1-2-73

Alice J. McGain
29 Wagner Ave.
Roosevelt NY

THIS IS NOT A NOTICE OF APPOINTMENT

Dear Sir:

Your name has been certified by the City Civil Service Commission to this department for consideration of appointment to position of Patrolman on Probation. The salary is \$11,200 per annum, plus 11 paid holidays and \$200 annual uniform allowance. The tenure of employment is probable permanent. (Certified applicants are subject to conditions set forth by the City Civil Service Commission.) If the spelling of your name is incorrect, call it to the attention of the appointing officer when reporting for the medical examination.

Report promptly on 1-13-73 at 8:30 a.m., at the Medical Unit, 7th Floor of the Police Academy, 235 East 20th Street, Manhattan, for an all day MEDICAL EXAMINATION.

BRING THIS NOTICE, A PEN, DRIVERS LICENSE, HIGH SCHOOL DIPLOMA OR EQUIVALENCY DIPLOMA WITH TEST SCORES WITH YOU.

If you do not wish to be considered, sign the statement below, checking the reason for your declination, filling in the required information, and return it immediately to The Chief Clerk's Office, 240 Centre Street, New York, N.Y. 10013. No other form of declination is acceptable.

A declination of appointment or a failure to respond to this notice will result in your name being withheld from future certification. Thereafter your name can be restored only upon written request for such recertification to the Department of Personnel. Upon restoration of your name to the list, you will be placed at the end of the list for recertification.

A. Bernard Kelland

(Chief Clerk)

DECLINATION OF APPOINTMENT (Civil Service Rule 4, Section 3)

I hereby decline appointment to the above position for the reason checked:

- ☐ My inability to accept at this time. (State reasons on back of this letter. If satisfactory to the City Civil Service Commission, certification of your name will be withheld automatically during the life of this list, until further notice from you.)

Declinations will be taken in force at least 60 days. They may be withdrawn at the discretion of the City Civil Service Commission on written application to 230 Church St., New York, N. Y. 10013, with the reasons therefor.

SIGN HERE

Address _____

(SEE REVERSE SIDE)

AD81

IMPORTANT

If you pass the medical examination, and no derogatory background information is received in the interim, you will be appointed on _____, if you have complied with the following terms:

A candidate must be 21 years of age at the time of appointment, and must be less than 29 years at the time of the medical examination. (If you have been in military service, you may deduct up to six years of service to bring you down to the minimum age limit.)

If you took an examination after May 11, 1963, you must be a citizen at the time of appointment.

You must be a resident of New York City, or Nassau, Suffolk, Westchester, Rockland, Orange or Putnam Counties, at the time of appointment.

You must be a high school graduate at the time of appointment, or have a high school equivalency diploma or General Equivalency Diploma from the Armed Forces. In the equivalency test you must have a total score of 225 points with a minimum of 35 points in each subject.

You must have a New York State driver's license.

In order to be entitled to Veterans preference, it is necessary that you were a New York State resident and that you were inducted from New York State into military service between the following dates:

June 26, 1950 to July 27, 1953

January 1, 1963 to the present.

If you wish to decline appointment, please state your reasons below.

I am very interested in the position of Police woman, however at the present time I am seven months pregnant. I am requesting a postponement of my medical until six weeks after the birth of my baby. At which time I would be medically fit to pass the medical examination. Please do not take my name off the list, and if possible give me a chance to obtain this position. Please let me know what has been decided.

Sincerely,

Alice Jeul McCain
ALICE JEUL MCCAIN

CHARGE OF DISCRIMINATION

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE.

This form is to be used only to file a charge of discrimination on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Case File No. TIN 4-0332

(PLEASE PRINT OR TYPE)

1 Your Name (Mr., Mrs., Miss) ALICE JEW. McCAIN Phone Number 318-58
 Street Address 29 WAGNER AVENUE
 City ROOSEVELT, NY State NEW YORK Zip Code 11575

2 WAS THE DISCRIMINATION BECAUSE OF: (Please check one)

Race or Color ☐ Religious Creed ☐ National Origin ☐ Sex ☒

3 Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or appraisal committee. If more than one, list all.

Name NEW YORK CITY POLICE DEPARTMENT (ROOSEVELT DEPT)
 Street Address NEW YORK, NY
 City NEW YORK State NEW YORK Zip Code _____
 AND (other parties if any) THE MEDICAL UNIT OF SHOT DEPT

4 Have you filed this charge with a state or local government agency? Yes ☐ When MONTH _____ DAY _____ YEAR _____ No ☒

5 If your charge is against a company or a union, how many employees or members? Under 25 ☐ 25 or more ☒

6 The most recent date on which this discrimination took place: Month 09 Day 05 Year 1973

7 Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary)

Approximately four years ago I took the New York City Police Woman Test # 2011, of which I placed #1103 on the list. After a short time I also took and passed the Physical. I have heard nothing from the police department until August 17, 1973. At which time I was notified to report for investigation & finger printing. At that time I was given additional papers to fill out in reference to investigation of my character. At that time I informed them that I was six months pregnant, due 1 November 1973. I was instructed to explain this to my soon to be assigned investigator. Two weeks later I received a phone call from OFFICER McShea (2nd investigation unit) instructing me to report to his office on 8/31/73 for my interview. At the interview I again explained my condition and was advised not to worry for I would most likely be granted a postponement. However I should wait until I am notified to take my medical, which might not be for some time. During home 8/31/73 I received a letter from the medical unit instructing me to report for my medical 9/12/73. On 9/12/73 I telephone both the Police medical unit & Office of Personnel requesting a postponement of my medical until six weeks after the birth of the baby. I was told by the medical unit that they could not grant me an extension (although above is not set policy) SEE ATTACHED

8 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

Date _____ (Sign your name) _____

Subscribed and sworn to before me this _____ day of _____ 1973

(Name)

(Title)

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you to get the form sworn to.

FORM APP-2 BUR. OF BUDGET—No. 124-P0001

FORM EEOC-5 (REV. 7-60)

AD83

ALICE MCCAIN

(COUNT OF QUESTION #7)

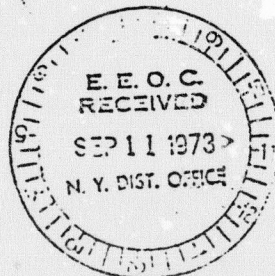
on
file

On 2/22 I was also informed that if I was to take the medical I would fail. If the list is not in effect when I re-apply (and there is a good chance it won't be in effect), then I would have to start over again. At the present time I am 25yrs old. It has taken them four years to call me, but if I have to go through the whole procedure again there is a chance that I will be over the age limit, which is 29. I am very interested in obtaining this position and feel I am qualified educationally (I am 18 semester hours from receiving my BA degree). My investigator, Officer Mc Shea tells me that there seems to be no problem as for as my character investigation goes. I don't think that I have been treated fairly, because my medical condition is not permanent or is it a situation ruling that can apply to all police candidates. I know for a fact that men applying for the job are called three times, and the test is made available more often than for women. However I spoke to a medical officer who in more words informed me that if a woman can not report when called, it is tough.

Please help me!

Sincerely,

Alice McCain
Alice McCain



REPLY AFFIDAVIT OF
MURRAY A. GORDON

-----X

Plaintiffs-Appellants, :

REPLY AFFIDAVIT
Docket No. 77-6119

Defendants-Appellees.

MURRAY A. GORDON, being duly sworn, deposes and says;

2. The opposing papers consist of affidavits of Assistant Corporation Counsel Judith A. Levitt ("Levitt aff.") and co-counsel Paul L. Brennan ("Brennan aff."). No memorandum of law was submitted by defendants. The defendants' affidavits contain legal and factual arguments, exhibits and other data which are not part of the record herein, and exceed 10 pages in length. Cf.

Rule 27, §27(a), Rules of the United States Court of Appeals for the Second Circuit Supplementing the Federal Rules of Appellate Procedure. In the event that the opposing papers are considered upon this motion, it is respectfully requested that this reply likewise be considered.

3. The opposing papers do not substantially rebut the showing of merit which plaintiffs have made on this motion.

4. We pointed out that at least 8 Circuits, including this Court, have held that Rule 60(b) may not be used to set aside a final judgment where the time to appeal from such judgment has expired and Rule 60(b) is invoked to correct a mistake in law evidenced after the final judgment. The defendants have failed to cite a single case or authority in support of the decision below or to rebut the uniform line of authority we cited, and rely solely on the proposition that the discretion of the Court below must prevail. In addition, defendants argue that the judgment set aside under Rule 60(b) is not final, but it is not denied that that judgment was expressly certified as final pursuant to Rule 54(b), Fed.R.Civ.P., and the Court below confirmed the finality of the judgment in its latest opinion (slip op. at 5, 7); once again no authority is cited by defendants and no argument is made beyond the statement of defendants' view that the judgment was not final.

5. We also argued that Teamsters^{1/} and Evans^{2/} were

2.

^{1/} International Brotherhood of Teamsters v. United States, 45 U.S.L.W. 4506 (1977).

^{2/} United Air Lines v. Evans, 45 U.S.L.W. 4566 (1977).

not applicable because there is here involved discrimination by a public employer which was unconstitutional and unlawful when it occurred, and that the perpetuation of such unlawful discrimination by a seniority system was not sponsored by Teamsters or Evans, which dealt with the perpetuation of discrimination by private employers. Defendants contend that Teamsters expressly reversed this Court's decision in Acha v. Beame by reason of the reference thereto in a footnote in a dissenting opinion in Teamsters. Levitt aff. at 15. The only reference to the decision of this Court in Acha v. Beame in the Teamsters majority opinion was favorable and in the context of confirming the standards of proof prescribed by this Court in the case of non-applicant discriminatees. Teamsters at 4517. Defendants also rely on Hazelwood^{3/}, which did involve a public employer. But, as the Court below observed (slip op. at 12), Teamsters did not decide and Hazelwood did not discuss or, apparently, consider the issues here raised concerning the perpetuation by a seniority system of pre-Title VII unlawful discrimination by a public employer.

6. Both Teamsters and Evans expressly denied immunization of post-Title VII seniority systems which are themselves the product of discrimination. We argued that the disparate layoffs here were the result of a merged list seniority system which was effectively established and implemented in 1975,

3.

^{3/}Hazelwood School District v. United States, 45 U.S.L.W. 4506 (1977).

on the eve of the layoffs, with the certain knowledge that it would have a disparate impact by sex without any justification or necessity therefor and in the face of an option which would have resulted in layoffs which would not impact disparately on women. Defendants argue that the merger of the Policewoman and Patrolman titles for layoff purposes was a matter of legal necessity in that the titles "had been merged for all purposes in 1973." Levitt aff. at 18. This response by the defendants is demonstrably incorrect. The separation of the titles of Policewoman and Patrolman was and is mandated by law. New York City Administrative Code §§434a-1.0, 2.0; Civil Service Law §50(7), 60(2). It cannot be seriously contended that that law was so superseded by internal Police Department organization as to foreclose the choice of separate or merged layoff lists authorized by Civil Service Law §80. The matter submitted by defendants, for the first time on this motion, does not sustain any such contention. Exhibit A (attached Levitt aff.) indicates that 290 Policewomen were transferred for budgetary purposes to the title "Patrolman/Policewoman"; there is no suggestion that the balance of the then 25,000 member force was likewise so transferred from the Patrolman title, or that men and women had the same title thereafter in the Police Department ("PD"). In any event, my original affidavit herein ("Gordon aff.") establishes that the separate titles of Patrolman and Policewoman existed for budgetary purposes as late as June 30, 1975. Gordon aff. Exh. A. Similarly, the April 23, 1973 Police Commissioner memorandum (Levitt Exh. B) did not convert Patrolmen and

Policewomen into the single title of Police Officer; not even the budgetary modification which is Levitt Exh. A. refers to the single title of Police Officer.

7. Moreover, documentary proof establishes that the Police Department has at all times designated and treated women in its uniformed forces differently from men. Attached as Exhibit "I" is a typical PD assignment sheet (this one for June 15, 1976) which refers to the "ASSIGNMENT OF FEMALE POLICE OFFICERS." Attached as Exhibit "J" is the PD personnel report as of September 16, 1976, indicating, once again, that the PD roster (as distinct from quotas) is broken out according to sex. Attached as Exhibit "K" is a typical "Available Forces Report" (this one for August 28, 1976), indicating a separate report with respect to "FEMALE POLICE OFFICERS ON DUTY." Also attached as Exhibit "L" is a typical sick report (this one for July 23 and June 24, 1977), which again distinguishes women by the designation "POF."

8. The differences between men and women PD officers is not confined to mere matters of designation or denomination. Attached as Exhibit "M" is a finding of the New York City Human Rights Commission, dated April 8, 1977, which concludes that there is probable cause for the charge of PD discrimination against women in the assignment of women and functions performed by women in the PD. The conclusion of this finding reads as follows:

"Female police officers constitute a disproportionately small number of employees in the respondents work force as a result

of prior exclusionary policies of the respondent to restrict the number of women on the force. The Police Department involuntarily assigns female officers to ten (10) out of seventy-three (73) precincts while assigning male officers to all seventy-three (73). Female officers are required to perform matron duty and as a result are denied equal terms and conditions of employment with their male counterparts. This involuntary assignment and the assignment to matron duty has a disparate and adverse impact upon the women on the force by denying female officers the same employment and promotional opportunities as their male counterparts, and therefore violates Section Bl-7.0 of the Administrative Code. Respondents have not demonstrated that there is no other alternative to justify the reliance upon a policy which has an adverse impact upon female officers."

9. In the light of the foregoing, there is clearly substantial merit in our contention that it was a post-Title VII act of discrimination to merge the titles of Patrolman and Policewoman on June 30, 1975 for layoff purposes when those titles were separate as a matter of law, involved the performance of different duties as a matter of fact, and the law permitted and authorized the separation of Patrolman and Policewoman for the purposes of formulating layoff rosters. Nothing in Evans or Teamsters touches upon this proposition, and nothing in the opposing papers diminishes the substantial merit of the plaintiffs' position on this issue.

10. We have argued that, in addition to the pre-1970 discrimination in hiring, which is not disputed by the defendants, those defendants continued to discriminate in hiring from 1970 to and including the layoffs by the utilization of examinations and

lists which discriminated by sex. Gordon aff. ¶¶ 9-10. The defendants contend that there was a freeze in hiring (except for Trainees) between 1970 and 1973, and that thereafter discrimination in hiring did not occur. Levitt aff. ¶¶ 26-31. The defendants' contentions are demonstrably incorrect and, in fact, misleading.

11. The Levitt affidavit purports to set forth the sequence of hirings in 1973 from lists which had not been used before the freeze period. Levitt aff. at ¶30. The table appearing in the Levitt affidavit is, however, substantially misleading. Reference to 3 of the 8 lists from which appointments were made in 1973 (see Levitt aff. at ¶27), is omitted from consideration. The 3 lists omitted consisted entirely of men, and a substantial number of appointments from those lists were made during the period cited by defendants. Moreover, the chart provided in Levitt affidavit ¶30 omits any reference to the appointments of male candidates with veterans' preference from lists established from Examinations 9019 and 9049.

12. From our analysis of the materials provided to us by defendants a correct chart of the approximate number of dates of appointments during the calendar year 1973 would read as follows:

Date	Examination No.								Other*** Lists
	7065*	8046*	8108*	9019*	9049*	9080**	9081**	0013**	
1-29-73	37	16	41	0	0	0	6	0	0
2-26-73	27	9	111	15	0	0	20	0	2
3-26-73	10	10	41	17	0	0	18	0	1
4-30-73	2	4	20	59	2	0	19	0	4
5-29-73	3	1	16	49	0	0	108	0	5
6-25-73	12	2	25	64	169	0	56	0	1

Date	7065*	8046*	8108*	9019*	9049*	9080**	9081**	0013**	Other*** Lists
7-30-73	4	0	15	21	13	80	71	0	1
8-31-73	10	5	16	25	25	179	63	0	3
10-1-73	1	0	0	21	19	120	28	261	15
10-29/73	1	1	0	16	12	100	41	210	10
11-19-73	0	0	0	10	11	70	22	108	8
12-17-73	4	1	0	11	8	49	26	74	210

*Figures for these lists do not include males who received preferences other than veterans' preference, or who left the Department prior to June 30, 1975. In many instances, therefore, the number of males appointed from those lists may be even greater than indicated herein.

**Plaintiffs are relying upon the figures given in ¶8 of the Brennan affidavit for these figures which purport to be accurate.

***This list includes males appointed on the indicated date who, as appears from the preferred list, were not appointed from any of the lists enumerated above.

The cited omissions in the table as presented by defendants are critical, as the above-corrected table indicates. The corrected table demonstrates that on all but two of the twelve appointment dates cited by defendants, less than 20% of all appointees were women. Overall, approximately 16% of all appointments made on these dates were of women.

13. The pattern is even more dramatic if one considers the entire pattern of appointments on or after January 29, 1973 (after Title VII was applicable to defendants): 4,236 males and only 513 females were appointed to the Department. (See ¶23 in both the complaint and the amended complaint, which was not denied in defendants' answer). Thus, during the period that defendants now claim they were not discriminating against women, less than 11% of all persons appointed PD were female, although, as defendants concede, approximately one-quarter of all persons taking PD exams in October of 1969 and in December of 1973 (when women

were admitted to the examinations) were female. (Affidavit of Cornelius J. Behan dated June 27, 1975, ¶12).

14. We have pointed out that if the relief sought on this motion is denied, 11 plaintiffs, who are proven victims of PD discrimination, may suffer irreparable loss of backpay; we further pointed out that no comparable injury would be incurred by the defendants since if the 11 plaintiffs were reinstated pending this appeal, defendants would receive full value, in services. Neither of these propositions is challenged by defendants. Instead, the defendants incorrectly allege that if the stay is granted plaintiffs would be reinstated "in lieu of incumbents with greater established seniority rights"^{4/} (Levitt aff. at 14), and incorrectly suggest that the 11 plaintiffs will suffer no irreparable harm because either they have employment or did not accept CETA appointments. The facts do not sustain any such suggestion.

15. Defendants allege two plaintiffs have been rehired as ACE appointees (Kathleen Jaffe and Theodora Moscatelli), and a third (Jane Waye) will be provisionally rehired on or about August 26, 1977. Each such appointee would be paid at a salary level reflecting her date of appointment, not at the higher salary level appropriate to her rightful seniority date as found by the Special Master. The differential is substantial, and would be

^{4/} The granting of the stay would not adversely affect any "incumbents." The issue here is whether 11 laidoff Patrolmen or Policewomen would be reinstated.

irreparably lost if defendants' view as to entitlement to backpay prevails.^{5/}

16. Defendants allege that three other plaintiffs declined CETA appointments (Vanina Maffia, Carol Conry and Marie Finnamore), and appear to suggest that therefore such plaintiffs would not sustain irreparable damage if the stay is denied. Two of these three (Maffia and Conry) were employed at the time of their hearings and therefore were not eligible for CETA appointments. Levitt aff. at ¶20. Maffia was also not qualified by reason of her non-residence in New York City. Brennan aff. at ¶11. The salaries earned by class members Maffia and Conry were, as appeared at their hearings, substantially less than the salaries payable to Policewomen. Tr. of hearings before Special Master Roberts at 4662-4666, 6145-6146. These two plaintiffs will therefore risk substantial irreparable loss if the stay is denied. Finnamore declined the CETA appointment, according to the information which she supplied our office by telephone on August 11, 1977, because she had been notified that the position was only temporary in nature and that her declination of that position would not prejudice her appointment to permanent PD reinstatement.

17. Defendants allege that four of the plaintiffs failed to appear when called for CETA appointments (Patricia Cardone,

10.

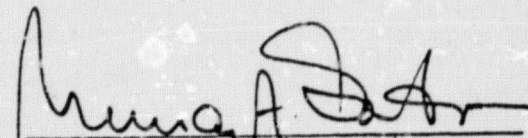
^{5/}The three plaintiffs thus rehired or to be rehired, if accorded the relief here sought, would not be rehired in lieu of any other rehiring since they have, according to defendants, been re-scheduled for rehiring without regard to this litigation. The granting of the relief here sought for the three plaintiffs would, therefore, not have the adverse impact upon some other potential rehiree upon which defendants rely for the denial of the stay.

Martina Guidione, Mary Jane Stagno and Nancy Howells). The transcript of the hearings of two of these plaintiffs, Cardone and Guidione, indicates that they were non-residents of New York City and therefore not qualified for CETA appointments. Brennan aff. at ¶11. Defendants allege that Stagno failed to appear on April 26, 1977 (Levitt aff. at 14); she advised my office by telephone on August 11, 1977 that on April 26 she was in Florida and not in New York City, and had not been contacted by that date for a CETA appointment. Defendants allege that Howells failed to appear for a provisional CETA appointment on April 26, 1977. Levitt aff. at 14. The transcript of her hearing indicates that on April 26, 1977 she was scheduled to, and did appear before the Special Master in this action so that she was unable to appear on April 26 for a CETA appointment.

18. Finally, with respect to one plaintiff (Carol Kane) the defendants allege that, for some unspecified reason, she was not qualified for a CETA appointment. Levitt aff. at 14. The transcript of her hearing before the Special Master indicates that as of April 22, 1977, she was employed and probably not qualified by reason thereof for a CETA appointment. See Levitt aff. at ¶20. The salary in the position she held was substantially less than that which she would receive in the event that the stay here sought is granted, and her loss of the difference would constitute a substantial risk of irreparable damage.

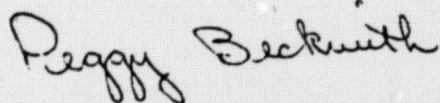
19. In summary, therefore, the defendants have not rebutted plaintiffs' claim of risk of substantial irreparable harm

if the relief here sought is denied.


MURRAY A. GORDON

Sworn to before me

this 12th day of August, 1977.



PEGGY BECKWITH
Notary Public, State of New York
No. 60-4624885
Qualified in Westchester County
Term Expires March 30, 1978

POLICE DEPARTMENT
CITY OF NEW YORK

CPS PATH 70
MNA 1679
25P 778

June 15, 1976

From: Commanding Officer, 25th Precinct
To: Commanding Officer, Manhattan North Field Services Area
Subject: ASSIGNMENT OF FEMALE POLICE OFFICERS

1. The following report is submitted as per the above cited communication numbers:

DATE	NAME	TOUR	DUTY	REMARKS
4-20	Boyde	8X4	TP 7	P/C1000 PP4/P/C1400 TP6
do	Collins B.	8X4	Court	P/C1545 PP29
do	Arthur	RDO		
do	Todman	8X4	SP 11/12	
do	Moitt	12X8	119th/Park & Lex.	
do	Lawrence	RDO		
do	McKanic	4X12	125th/2nd & 3rd Ave.	
do	Rinaldi		Temp Assign. C.O. Narcotics	
4-21	Boyde	8X4	TP 8	0800-Escort Prisoner 0930-Return to TP 8 1000 PP 16/1400 TP8 1530 PI28
do	Collins B.	8X4	Court	
do	Arthur	4X12	Exc. Vac/1682	
do	Todman	8X4	PP 18/19	0800-Escort Prisoner 0930-Return to post
do	Moitt	12X8	118th/120th & Lex.	
do	Lawrence	RDO		
do	McKanic	4X12	TP 126/2nd Ave. 2030-209 E. 125th St.	
do	Rinaldi		Temp Assign. C.O. Narcotics	
4-22	Boyde	8X4	PP5	1345 Search/25 P.I.U.
do	Collins B.	8X4	Court	
do	Arthur		Exc. TOP(268)	
do	Todman	8X4	TP 18/19	
do	Moitt	RDO		
do	Lawrence	12X8	119th/Park & Lex.	
do	McKanic	4X12	TP 125th/2nd Ave. P/C 1505-19th Pot.	
do	Rinaldi		C.O. Narcotics	
4-23	Boyde	RDO		
do	Collins B.	8X4	Court	
do	Arthur		Exc. Vac. (1682)	
do	Todman	8X4	PP 33/34	
do	Moitt	RDO		
do	Lawrence	12X8	Sector "B"	
do	McKanic	4X12	Sector "C"	
do	Rinaldi		C.O. Narcotics	

DATE	NAME	TOUR	DUTY	REMARKS
4-24	Boyde	RDO		
do	Collins B.	8X4	I/T 1930	
do	Arthur	Exc. Vac./1682		
do	Todman	RDO		
do	Moitt	8X4	PP 12/13	0800-Matron/1330 Return to post
do	Lawrence	12X8	Sector "B-2"	
do	McKanic	RDO		
do	Rinaldi	RDO		
4-25	Boyde	RDO		
do	Collins B.	8X4	Exc. Emer. (1978)	
do	Arthur	4X12	Exc. Emer. (1682)	
do	Todman	RDO		
do	Moitt	8X4	PP 12/13	0845 P/C to 65th & Mad. 1450 returned to post
do	Lawrence	12X8	125th/2nd & 3rd.	
do	McKanic	RDO		
do	Rinaldi	RDO		
4-26	Boyde	4X12	Exc. Sick	
do	Collins B.	8X4	Court	returned 1400 PP 37
do	Arthur	RDO		
do	Todman	4X12	Fire Scene 209 E. 125th St.	
do	Moitt	8X4	Court	
do	Lawrence	12X8	S.H. Perimeter	
do	McKanic	RDO		
do	Rinaldi	C.O. Narcotics		
4-27	Boyde	4X12	Exc. Sick	
do	Collins B.	8X4	U.T. 20th Pct.	
do	Arthur	RDO		
do	Todman	4X12	SP 12	P/C 1600 Sec. E-2
do	Moitt	8X4	(Matron)	0800 -Excort/1105 PP20
do	Lawrence	RDO		
do	McKanic	12X8	125th /2nd & 3rd	
do	Rinaldi	C.O. Narcotics		
4-28	Boyde	4X12	Exc. Sick	
do	Collins B.	RDO		
do	Arthur	8X4	Exc. Vac. (1682)	
do	Todman	4X12	Cardio Course 20th Pct.	
do	Moitt	8X4	CCRB	1200 PP8
do	Lawrence	RDO		
do	McKanic	12X8		
do	Rinaldi	C.O. Narcotics		
4-29	Boyde	4X12	Exc. Sick	
do	Collins B.	RDO		
do	Arthur	8X4	Exc. TOP (1682)	
do	Todman	4X12	TP 125th/ Lox. Ave.	
do	Moitt	RDO		
do	Lawrence	8X4	SS #2	P/C 0800-Matron
do	McKanic	12X8	Matron	
do	Rinaldi	C.O. Narcotics		

DATE	NAME	TOUR	DUTY	REMARKS
4-30	Boyde	4X12	Exc. Sick	
do	Collins B.	RDO		
do	Arthur	8X4	Exc. TOP (1682)	
do	Todman	4X12	SP 10	
do	Moitt	RDO		
do	Lawrence	8X4	TP 125th/2nd & 3rd	
do	McKanic	12X8	119th/Park & Lex.	
do	Rinaldi		C.O. Narcotics	
5-1	Boyde	RDO		
do	Collins B.	4X12	Exc. Vac. (1979)	
do	Arthur	8X4	Exc. TOP (1682)	
do	Todman	RDO		
do	Moitt	4X12	119th/121st & Lex.	
do	Lawrence	8X4	PP33 P/C1030 45th St.&6th Ave.	
do	McKanic	12X8	T.S.	
do	Rinaldi	RDO		
5-2	Boyde	RDO		
do	Collins B.	4X12	Exc. Vac. (1979)	
do	Arthur	8X4	Exc. Vac. (1682)	
do	Todman	RDO		
do	Moitt	8X4	Exc. (Communion Break)	
do	Lawrence	8X4	PP 25 0930 67th & 5th Ave.	
do	McKanic	RDO		
do	Rinaldi	RDO		
5-3	Boyde	RDO		
do	Collins B.	4X12	Exc. Vac. (1979)	
do	Arthur	RDO		
do	Todman	8X4	U.T. 20th Pct.	
do	Moitt	4X12	Cardio 23rd Pct.	
do	Lawrence	8X4	PP 27	
do	McKanic	RDO		
do	Rinaldi		C.O. Narcotics	
5-4	Boyde	8X4	Exc. Sick	
do	Collins B.	4X12	Exc. Vac. (1979)	
do	Arthur	RDO		
do	Todman	8X4	Sector "B"	
do	Moitt	4X12	SP 9 2255 23 Pct. Search	
do	Lawrence	RDO		
do	McKanic	8X4	PP 4	
do	Rinaldi		C.O. Narcotics	
5-5	Boyde	8X4	Exc. Sick	
do	Collins B.	4X12	Exc. Vac. 1979	
do	Arthur	RDO		
do	Todman	8X4	PP 13/19 P/C-Headquarters	
do	Moitt	4X12	125th/2nd & 3rd.	
do	Lawrence	RDO		
do	McKanic	8X4	PP 7	
do	Rinaldi		C.O. Narcotics	

DATE	NAME	TOUR	DUTY	REMARKS
5-6	Boyde	UX1	PP 15	
do	Collins	RDO		
do	Arthur	4X12	118th/120th Park/	
do	Todman	8X1	TP 125/2nd & 3rd.	
do	Molitt	RDO		
do	Lawrence	4X12	W's 18/19	
do	McKanic	8X1	PP 5	
do	Rinaldi	C.O.	Narcotics	
5-7	Boyde	8X1	PP 31/32	P/C 1400/ 125th&Lex.
do	Collins B.	RDO		
do	Arthur	4X12	Detail-Downing Stad.	
do	Todman	8X1	TP 124-126th/2nd Ave.	
do	Molitt	RDO		
do	Lawrence	4X12	TP 125th/2nd Avenue	
do	McKanic	8X1	PP 54	
do	Rinaldi	C.O.	Narcotics	
5-8	Boyde	8X1	S.H. Clerk	
do	Collins B.	RDO		
do	Arthur	4X12	Randall's Island	
do	Todman	RDO		
do	Molitt	8X1	PP 8/9	P/C 0745 Downing Stad.
do	Lawrence	4X12	Exc. L/T (2096)	
do	McKanic	8X1	TP 125th/Lex Ave.	
do	Rinaldi	RDO		
5-9	Boyde	RDO		
do	Collins	8X1	Exc. Vac. (1979)	
do	Arthur	4X12	Downing Stad.	
do	Todman	RDO		
do	Molitt	8X1	C.O. 32nd Pct.	
do	Lawrence	4X12	Exc. L/T (2096)	
do	McKanic	RDO		
do	Rinaldi	RDO		
5-10	Boyde	RDO		
do	Collins B.	8X1	Exc. Vac. (1979)	
do	Arthur	4X12	U.T. 20th Pct.	
do	Todman	RDO		
do	Molitt	8X1	S.H. Clerk	
do	Lawrence	4X12	Exc. L/T (2096)	
do	McKanic	4X12	Cardio Course 23rd Pct.	
do	Rinaldi	C.O.	Narcotics	
5-11	Boyde	RDO		
do	Collins B.	8X1	Exc. Vac. (1979)	
do	Arthur	4X12	PP 8/9	
do	Todman	4X12	PP 31/32	
do	Molitt	8X1	PP 5	
do	Lawrence	RDO		
do	McKanic	4X12	Cardio Course 23rd Pct.	
do	Rinaldi	C.O.	Narcotics	

DATE	NAME	TOUR	DUTY	1. JAMES
5-12	Boyd	12X8	118th 120th / Lex. Ave.	
do	Collins	8X4	Exc. Vac. (1979)	
do	Arthur	RDO		
do	Todman	4X12	Sector "B"	
do	Moitt	8X4	U.T. 20th Pct.	
do	Lawrence	RDO		
do	McKanic	4X12	S.H. Clerk	
do	Rinaldi	C.O.	Narcotics	
5-13	Boyd	12X8	Sector "A"	
do	Collins B. =	8X4	Exc. Vac. (1979)	
do	Arthur	RDO		
do	Todman	8X4	PP 18/19	
do	Moitt	RDO		
do	Lawrence	8X4	Exc. Vac. (2228)	
do	McKanic	4X12	TP 124th / 3rd Ave.	
do	Rinaldi	C.O.	Narcotics	
5-14	Boyd	12X8	Sector "A"	
do	Collins B.	RDO		
do	Arthur	8X4	Court	
do	Todman	4X12	110-112th / Lex. Ave.	
do	Moitt	RDO		
do	Lawrence	8X4	Exc. Vac. (2228)	
do	McKanic	4X12	119th Park / Lex.	
do	Rinaldi	C.O.	Narcotics	
5-15	Boyd	12X8	119th St. / Park-Lex.	
do	Collins B.	RDO		
do	Arthur	8X4	PP 6 P/C 64th & 5th Ave.	
do	Todman	4X12	SP 14	
do	Moitt	RDO		
do	Lawrence	8X4	Exc. Vac. (2228)	
do	McKanic	4X12	119th / Park Lex.	
do	Rinaldi	RDO		
5-16	Boyd	12X8	2345 P/C CO. 19th Pct.	
do	Collins B.	RDO		
do	Arthur	8X4	PP 8	
do	Todman	RDO		
do	Moitt	4X12	E 8/9	
do	Lawrence	8X4	Exc. Vac. (2228)	
do	McKanic	RDO		
do	Rinaldi	RDO		
5-17	Boyd	RDO		
do	Collins B.	12X8	119th St. / Park & Lex.	
do	Arthur	8X4	Court	
do	Todman	RDO		
do	Moitt	4X12	SP 9 0100 APO-Arrest	
do	Lawrence	8X4	Exc. Vac. (2228)	
do	McKanic	RDO		
do	Rinaldi	C.O.	Narcotics	
5-18	Boyd	RDO		
do	Collins	12X8	118th-120th / Park-Lex.	
do	Arthur	8X4	Sector "C"	

DATE	NAME	TOUR	DUTY	REMARKS
5-18	Todman	RDO		
do	Moitt	4X12	SP 09	
do	Lawrence	RDO		
do	McKanic	8X4	PP 4	
do	Rinaldi		C.O. Narcotics	
5-19	Boyde	4X12	SP 10	
do	Collins B.	12X8	Matron Duyt(M.T.S.)	
do	Arthur	RDO		
do	Todman	8X4	PP 33/34	
do	Moitt	4X12	110-112/2nd Lex.	
do	Lawrence	RDO		
do	McKanic	8X4	CCRB	
do	Rinaldi		C.O. Narcotics	
5-20	Boyde	4X12	Vac. Day (2397)	
do	Collins B.	12X8	(M.T.S.) <i>missed</i>	
do	Arthur	RDO		
do	Todman	8X4	U.T. 20th Pot.	
do	Moitt	4X12	S P 12	
do	Lawrence	RDO		
do	McKanic	8X4	Sector "C"	
do	Rinaldi		C.O. Narcotics	

gm

Edward F. Grunewald
Edward F. Grunewald
Captain

Includes 34 laid-off A.M. re-instated under Federal grant.
 Includes 33 laid-off P.O.P. re-instated under Federal grant.

VORN PERSONNEL DATA

PD 106-351 REV. 3-76

DATE As of 2400hrs. Sept. 16, 1976

ANK	1	2	3	4	5	6	7	8	9	10
	Budget Quota	Working Quota*	Number Employed**	Suspended	Leave of Absence With Pay	Leave of Absence Without Pay Over 30 Days	Terminal Leave On Line	Active***	Vacancies****	Terminal Leave Lump Sum Line
ADMINISTRATIVE	1	1	1					1		
FIELD SERVICES	1	1	1					1		
DETECTIVES	1	1	1					1		
INSPECTORIAL SERVICES	1	1	1					1		
ORGANIZED CRIME CONTROL	1	1	1					1		
RECORDS	1	1	1					1		
TRAINING CHIEF	15	15	12					12	3	
DEPUTY CHIEF	23	23	20					20	3	
INSPECTOR	43	43	36				2	34	7	
DEPUTY INSPECTOR	101	101	82				5	77	19	
CAPTAIN	240	240	312				7	305	28	
DIRECTOR LEGAL BUREAU	1	1	1					1		
SPECIAL ASSIGNMENT	15-10JCC	15-10JCC	15+10JCC					16	1	
COMMANDER DETECTIVE SQUAD	65	65	44			1	1	42	21	
DEPUTY	943	948	861		1	1	30	820	87	
SPECIAL ASSIGNMENT	22+10JCC	22+10JCC	22+10JCC			1	1	21		
SUPERVISOR DETECTIVE SQUAD	95	95	67			1	1	65	28	
SERGEANT	2552	2552-4MC	2538+4MC	2	1	5	49	2485	144	
FIRST GRADE	MALE 105	105	98				5	93	5	
FEMALE			2					2		
SECOND GRADE	MALE 530	530	460			2	22	438	54	
FEMALE			7					7		
THIRD GRADE	MALE 2455	2455	2651+10JCC			3	27	2552		
FEMALE	1-10JCC	1-10JCC	48			1		47	321	
SPECIAL ASSIGNMENT	77	77	32					32	45	
MALE										
FEMALE	19574	19574	18440	41	1	10	175	18227	857	
			258			8	1	258		
CHIEF	1	1	1					1		
DEPUTY CHIEF	1	1	1					1		
SURGEON	20	20	21				1	20	5	
TOTALS	27,626	27,631	26,070	43	3	33	327	25,664	1551	

* Col. 2 Working Quota = Sum of Columns 3, 9 and 10
 ** Col. 3 Number Employed = Sum of Columns 4 thru 8
 *** Col. 8 Active = Column 3 Minus Columns 4 thru 7
 **** Col. 9 Vacancies

AD103

QUEENS AREA

QUEENS AREA
OPERATIONS
ORDER 74-1 s.74

August 28, 1976

MEMORANDUM FOR: ALL QUEENS AREA PRECINCT COMMANDERS.

SUBJECT: REVISED FORMAT FOR AVAILABLE FORCES REPORT.

1. THE FOLLOWING WORK SHEET FORMAT SHALL BE USED FOR CALLING IN AVAILABLE FORCES INFORMATION TO QUEENS AREA (520-9267) IMMEDIATELY AFTER ROLL CALL - 1st PLATOON, 2nd PLATOON, AND 3rd PLATOON - DAILY, BEGINNING 0800 HOURS, WEDNESDAY, SEPTEMBER 1, 1976:

WORK SHEET FORMAT

- A. SURPLUS RMP'S - INCLUDE ALL MARKED RMP'S AVAILABLE THAT ARE NOT BEING USED.
1. RMP SECTORS ACTUALLY ON DUTY
2. OTHER MARKED RMP AUTOS ON DUTY (BURGLARY PATROL, ROBBY PATROL, RAPE PATROL, RESCUES: CAR, ETC.) DO NOT INCLUDE ANTI-CRIME.
3. SCOOTERS ON PATROL.
4. LIEUTENANTS AND SERGEANTS IN RMP'S ASSIGNED AS PATROL SUPERVISORS.
5. OTHER LIEUTENANTS AND SERGEANTS ON DUTY (S.N. OFFICER, INTEGRITY, ADMINISTRATIVE, ETC.)
6. OTHER POLICE OFFICERS ON DUTY (INCLUDE SCHOOL POSTS, HOLIDAY POSTS, ANTI CRIME, OPERATORS OF SUPERVISORS AUTOS, CLERICAL, S.N. PERSONNEL AND FOOT POSTS)
7. POLICE OFFICERS ON SPECIAL POSTS (INCLUDE FIXED POSTS, STRIKES, DEMONSTRATIONS, PARADES OR SIMILAR DUTY WITHIN THE COMMAND.
8. FEMALE POLICE OFFICERS ON DUTY.
9. POLICE OFFICERS TO COURT, ADJUDICATION OR OTHER AGENCY (INCLUDE RANGE, AND IN SERVICE TRAINING)
10. TOTAL POLICE OFFICERS ON DUTY.
11. TOTAL POLICE OFFICERS SCHEDULED FOR DUTY.

NOTE: CHECK YOUR TOTALS BY ADDING THE NUMBER OF POLICE OFFICERS ASSIGNED TO CARS IN #1 & #2 PLUS #3,6,7, AND 9. ALL MUST ADD UP TO THE FIGURE IN CAPTION #10. THESE FIGURES MUST BE ACCURATE.

MEMO# 24

NAME	TAX/PLG	YOB	COMMAND	TIME	APPR	NO
05-PO MICHAEL IREGLIO	369926	47	6PCT	2200	LOC-6348	3
06-PO DONALD LAMPKIN	868608	43	77	2205		17
07-PO REGINALD DAVIS	866722	45	41	2210	10-147	3
08-PO MARK ZUCCO	367240	52	1PCT	2210		9
09-PO CONNOLDI DANIEL	848947	36	32	2215	10-147	3
10-POF BETTIE READERS	366380	46	62	2215		9
11-PO FINLEY SHEPARD	362575	40	43	2225		16
12-PO MICHAEL GALATI	861007	47	81	2230		7
13-PO GARY PALMSE	364223	43	31	2235	CHRONIC	11
14-PO CAPL DEMOBRECA	327566	23	34	2245	10-147	3
15-PO JAMES GEISLOER	361262	44	67	2305		6
16-PO THOMAS TULLY	361459	45	25	2310	10-147	13
17-PO JOSEPH CUCCHIARA	349363	41	13	2315	CHRONIC	12
18-PO ABRAHAM ORTIZ	363467	50	94	2320	CHRONIC	16
19-PO JAMES POWELL	355343	42	83	2315	CHRONIC	11
100-PO JOSEPH THORNTON	353733	43	50 P	2305	10-147	2
101-PO FRANCIS CLARK	338590	35	100	2255		18
102-PO JOHN MCCARRON	361322	46	47	2250	CHRONIC	3
103-PO JAMES BURET	350451	35	6PCT	2325	10-147	17
104-PO ROBERT SAHLBOM	357610	44	48	2325		3
105-POF KERRY SCHREIMER	366565	49	9PCT	2335		12

AUTH MEDICAL SECTION SICK DESK PO MCTARGNEYH 0010
END END END END END ED EUNNNNNNNNN

NYPD FILE 13 072477 HAVE ARRESTED NYPD
THE IPF HAVE ARRESTED IN THE 75PCT FOR G.L.A
MICHAEL BROCKHOFF DOB 051356
HW 21 5'1" 145 BALD MAZ EYES LT COMPL
WEARING BLU JEANS WHI T SHRT RESIDES 1266 E 55ST
BK IN THE 65PCT AUTH MAYLOR
OPER HOGAN 0020HOURS

IPIS

NYPD FILE 13 072477 HAVE ARRESTED NYPD
THE 52PCT HAVE ARRESTED FOR ATTEMPT RAPE ASSLT
THOMAS J. DEVERY DOB 121357
HW 19 5'9" 170 BRO HAIR BLU EYES LT COMPL
WEARING BLU JEANS WHI T SHRT RESIDES 362 E 195ST BK
IN THE 52 PCT
AUTH CALISE 52PCT
OPER HOGAN 0022HOURS

IPIS

TO COMMANDS CONCERNED DATE/TIME 072477/ 004927
IPIS-SPIS STOLEN VEHICLE/LICENSE PLATE ENTRIES
31160 063-09878 315FFX NY PC 6D47R3R374574 73 CADI DEV 2D BRO
31160 063-09878 315FFX NY PC 6D47R3E374574 73 CADI DEV 2D BRO
31161 066-08628 737GUF NY PC 3Y57W2M703420 72 OLDS TOR 2D YLU
31162 063-09876 620QIK NY PC 4V37I2Y130942 72 BUIC ELE 2D TAN
IPIS

TO COMMANDS CONCERNED DATE/TIME 072477/ 010428
IPIS-SPIS STOLEN VEHICLE/LICENSE PLATE ENTRIES
AD105

31122 063-2862 54766H NY 931885X13 015 063
 30316 076-4402 73284C NY 11664447C U
 30317 018-20833 259XLC NY RH4561R16863A H
 IPIS

TO COMMANDS CONCERNED DATE/TIME 072477/ 132016

IPIS-SPIS STOLEN VEHICLE/LICENSE PLATE CANCELS

91221 047-19729 79533H NY 0
 91212 048-10138 47130D NY 04
 90335 043-12707 9310SP NY RT83025181 04
 IPIS

TO COMMANDS CONCERNED DATE/TIME 072477/ 133124

IPIS-SPIS STOLEN VEHICLE/LICENSE PLATE ENTRIES

51265 034-8800 8046XV NJ PC 75628261650 57 FORD LTD 2D BLU
 51267 061-12343 5266UH NY PC NR167175 67 CAD I ELD 2D GLD
 51263 109-10382 132AXN NY PC 4443703129357 70 BUIC SKY 2D YEL
 51268 109-10387 132AXN NY PC 4443703129357 70 BUIC SKY 2D YEL
 IPIS

TO COMMANDS CONCERNED DATE/TIME 072477/ 133553

IPIS-SPIS STOLEN VEHICLE/LICENSE PLATE ENTRIES

51269 071-12700 585AXL NY PC CL41035139452 66 CHRY NEW 4D GLD
 51270 083-3520 523XRG NY PC A40465C728677 74 AMER GRL 2D BRO
 IPIS

TO ALL COMMANDS CONCERNED

SICK REPORTS

JULY 24 1977

NAME	TAX REG	YOB	COMMAND	TIME	APP	CHN/LOG	MO
19-PO MICHAEL IREGLIO	269326	47	6	1030			6
20-POF PAIRICA COLLINS	267485	41	42	1110			4
21-PO EDUARD CASSESE	959313	38	44	1115			2
22-PO RALPH CORRENTE	345525	40	94	1130			13
23-PO FRANK KNAZIK	849488	40	47	1200			3
24-PO CHARLES TAYLOR	841556	34	78	1205			15
25-PO THOMAS SPADAFORA	235076	44	72	1220	DXLN CT 7/26		3
26-PO ROBERT MCNAIR	868196	43	46	1240			5
27-DET WILLIAM GUERARDY	853907	44	41	1230			11
28-PO JAMES FEHLING	557679	41	NIS	1250	MAN CT 07/27		13
29-PO JOHN FITZGERALD	793425	43	94	1230			
30-PO RONALD BUSHY	835639	42	CT DIV	1310			17
31-PO ROBERT GOITSIKLAK	353916	37	TPH	1300			17
32-PO JOHN PENNEISEN	859563		40	1315			15
33-POF MARY BLESSINGTON	856775	38	SCU	1330	LOG/6355		14
34-PO RICHARD FRIEDEL	261754	47	G2	1330			6
35-PO THOMAS TOLINSON	261547	48	NIS	1330	10147		18
36-PO ALFRED DELEO	957624	43	BK ROBY	1345			13
37-PO LEO BROZOUSKI	867990	52	NIS	1555			7

AUTH MED SICK DESK
 ZZZ

OPN KUMLE 1400 HRS

TO COMMANDS CONCERNED DATE/TIME 072477/ 141033

IPIS-SPIS STOLEN VEHICLE/LICENSE PLATE CANCELS

31225 072-07272 779PAZ NY 1H27L182610 72
 30326 041-07849 128NYU NY 604823E356712 41
 24017 113-04269 615QYP NY 3D27F187302 11
 IPIS

TO COMMANDS CONCERNED DATE/TIME 072477/ 141103

IPIS-SPIS STOLEN VEHICLE/LICENSE PLATE ENTRIES

AD106

April 8, 1977

The Record

Counsel's Office

Policewomen's Endowment Association, Inc. v. New York City
Police Department and Police Commissioner Codd, 7637-EG

Summary of Complaint:

Complainant is an organization established by female police officers for the purpose of representing the interests of women employed by the respondents. The Executive Board filed a verified complaint on July 27, 1976, charging that respondents unlawfully discriminates against female police officers in violation of the Administrative Code of New York City, Section B1-7.0(1) by subjecting female police officers to different and unequal terms and conditions of employment because of their sex.

Specifically, complainant alleges that its members are involuntarily assigned to do matron duty while male police officers are assigned to attendant duty on a voluntary basis. To accommodate the requirement that there be a sufficient number of policewomen available to cover the departments matron duty needs, female police officers are assigned to only 10 out of the 73 precincts while male police officers are assigned to any of the 73 precincts. As a consequence of this involuntary assignment, complainants allege female police officers are restricted from certain types of duty such as anti-crime, crime prevention, community relations, roll call and other assignments which increase the career opportunities available to police officers. Complainant further alleges that female police officers are assigned no duties on a steady basis as are male police officers and are subject to "fly" from one precinct to another in four out of five tours. As a result of the unsteady nature of their assignments, complainant charges, female police officers do not have the opportunity to achieve the same performance and professional growth as male police officers. Moreover, female police officers unlike male police officers are assigned to cover the precinct and the area.

- 2 -

With regard to other privileges enjoyed by male police officers; complainant charges that its members are denied the right to pick annual vacations with their squads, emergency days off, and the privilege of changing tours to go to school. Although mutuality is a contractual right, complainant charges that they are not honored for female police officers but are honored for male police officers.

With regard to the Brooklyn area, complainants charge that female police officers are not allowed to change their chart or squad for any reason whatsoever, while male police officers have complete freedom in this regard. In the 34th Precinct, female police officers are assigned five or six post changes during a tour of duty. Complainant maintains that no male police officer is placed in a similar situation.

Complainant further charges that female police officers returning from maternity leave are not reassigned to their former command, while male police officers returning from military duty have the option of returning to their former command. Complainant charges that female police officers are confronted daily with various forms of harassment and are subjected to a different course of treatment in their employment.

Summary of Investigation:

Investigation reveals that the complainant is an interest group organized by female police officers for the purpose of representing the interests of its members in their relationship with the respondent Police Department. A review of all of the information received demonstrates that in the Field Services Division female police officers, unless otherwise exempted, are required to perform matron duty on an involuntary basis and are assigned to only 10 out of 73 precincts. Males, however, are permitted to voluntarily select an attendant duty assignment and are assigned in any of the 73 precincts. Matron and attendant duty encompasses the searching and guarding of detainees, prisoners, and others in custodial care and the guarding of material witnesses.

Prior to June 1975, there were approximately 700 women on the police force. Because of prior exclusionary practices by respondents, many female police officers had not obtained the requisite seniority to withstand the lay offs occurring in June 1975. Thus, some 399 female officers were laid off effective June 1975. Of the 302 remaining women, not all are assigned to field services. Eighty-nine (89) are senior personnel (i.e., detectives and sergeants, etc.)

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and are not required to perform matron duty services. Ninety-one (91) are assigned to city wide jobs and are not available to field service duties. The remaining one hundred and twenty-two (122) women are assigned to the Field Services Division. Of these, twenty-four (24) are not available for patrol duty. The remaining 98 women are involuntarily assigned to 10 out of the 73 precincts. Six of the 98 women work on youth car duty (a special assignment based on hardship and family consideration) and are unavailable for matron duty. Twenty-eight (28) female police officers volunteered to work steady tour duties as matrons. The remaining 64 women are all assigned to patrol duty and are assigned to the first 9 squads of the 24 squad chart in the 10 precincts selected to detain female prisoners in order to be available to accommodate the matron duty requirements of the Police Department.

Respondents allege that as a result of the 1975 lay offs, there is an insufficient number of female police officers to man detention facilities, guard hospitalized female prisoners and female witnesses. As a consequence, respondents maintain all 64 women in field services are needed to provide full coverage and, unless specifically exempted, must be involuntarily assigned to the 10 precincts. Respondents admit that other assignments to other details are denied unless hardship can be demonstrated because reassignment may impair the Department's ability to provide adequate matron duty coverage.

The investigation reveals that as a consequence, female police officers are restricted from certain types of duty. Thus their promotional opportunities are seriously impaired. Respondents substantiates that in order to accommodate its matron duty needs, female police officers on patrol at various points are required to "fly" from one area to another to fulfill matron duty services and as a consequent, do not have steady tours of duty, unlike their male counterparts. As a result of their inability to obtain steady tours, policewomen are unable to fully familiarize themselves with a location or specific duty and are thereby deprived of experience, training, and promotional opportunities in the same manner as their male counterparts.

In the Brooklyn area, while transfers and changes in squads are regularly honored for men, female police officers are not allowed to change their squads or to transfer to other precincts because of what the respondents allege to be the deleterious effects upon the Department's ability to fulfill its matron duty needs. Finally, female police officers are unable to change tours to go to school because they must be assigned in such a manner as to accommodate

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matron duty, while male police officers are permitted to avail themselves of educational opportunities.

Conclusion:

Female police officers constitute a disproportionately small number of employees in the respondents work force as a result of prior exclusionary policies of the respondent to restrict the number of women on the force. The Police Department involuntarily assigns female officers to ten (10) out of seventy-three (73) precincts while assigning male officers to all seventy-three (73). Female officers are required to perform matron duty and as a result are denied equal terms and conditions of employment with their male counterparts. This involuntary assignment and the assignment to matron duty has a disparate and adverse impact upon the women on the force by denying female officers the same employment and promotional opportunities as their male counterparts, and therefore violates Section B1-7.0 of the Administrative Code. Respondents have not demonstrated that there is no other alternative to justify the reliance upon a policy which has an adverse impact upon female officers.

Recommendation:

Probable Cause.

c1

THE CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS

----- x
POLICEWOMEN'S ENDOWMENT ASSOCIATION, :
INC., :

Complainant, :

- against -

NEW YORK CITY POLICE DEPARTMENT :
and POLICE COMMISSIONER CODD, :

Case No. 7637-EG

Respondents. :
:
:

----- x
On July 27, 1976 the above-named complainant(s)
filed a verified complaint with the Commission on Human Rights charging
the above-named respondent(s) with an unlawful discriminatory practice
in violation of the Administrative Code of the City of New York.

After investigation, the Commission on Human Rights has
determined that there is probable cause to believe that the responder
has have engaged in or is are engaging in the unlawful discriminatory
practice complained of.

The New York City Administrative Code provides for the
resolution of complaints by "conference, conciliation and persuasion"
(Section B1-8.0). Accordingly, the respondent may contact
Judith Pierce at 566-5428 to establish a date for the
first conciliation meeting. Failing to hear from you by April 22
we will notice the case for public hearing.

CITY COMMISSION ON HUMAN RIGHTS

Dated: APR 11 1977

BY: Preston David
Preston David
Executive Director

TO: Ms. Anne Powers
President
Policewomen's Endowment Association
Post Office Box 874
Times Square Station
New York, New York 10036

Honorable Michael Codd
Commissioner
New York City Police
Department
One Police Plaza
New York, New York 10007

AD111

SECOND AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BERALDINE L. ACHA, ARLENE M. EGAN, and :
ALICE MCCAIN, each individually and on :
behalf of all others similarly situated, :

Plaintiffs, :

-against- :

ABRAHAM D. BEAME, individually and in :
his capacity as Mayor of the City of :
New York, MICHAEL J. CODD, individually :
and in his capacity as Police Commissioner :
of the New York City Police Department, :
and THE CITY OF NEW YORK, as a public :
employer, :

Defendants. :

SECOND AMENDED
COMPLAINT

75 Civ. 3123
K.T.D.

77 AUG 23 PM 12:17

Preliminary Statement

1. This is a class action for declaratory, injunctive, and monetary relief pursuant to the Fourteenth Amendment to the United States Constitution, 28 U.S.C. §2201 and §2202, 42 U.S.C. §1983, and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000e through §2000e-17), to protect and compensate plaintiffs herein and the class which they represent from and for deprivation of certain rights, privileges and immunities secured by the Due Process and Equal Protection Clauses of the said Fourteenth Amendment and by said statutes. Injunctive relief is sought to enjoin defendants from retaining on a laid-off status, refusing

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to rehire, and denying rightful seniority to any females employed in the title of Policewoman ("PW") in the New York City Police Department ("PD") uniformed forces ("U/F") prior to July 1, 1975, and laid-off on or after June 30, 1975 solely for budgetary reasons. Declaratory judgment is sought declaring that the actions of the defendants in terminating the employment of such PWs employed by the PD and denying them their rightful seniority are unconstitutional, illegal, and void as applied to plaintiffs and all other similarly situated PWs. Monetary relief in an amount in excess of \$10,000.00 is sought to compensate plaintiffs and each member of the class which they represent to full compensation, past and future, for any loss, injury, or damage they did or will incur or sustain by reason of the aforesaid actions of the defendants, together with counsel fees and the costs of this action.

Jurisdiction

2. Jurisdiction is conferred upon this Court by 28 U.S.C. §1331, §1343(3) and §1343(4), providing for jurisdiction in this Court for an action arising under the Constitution and laws of the United States to redress the deprivation, under color of state law, of rights, privileges and immunities guaranteed by the Constitution of the United States and to secure injunctive, declaratory, and monetary relief in an amount in excess of \$10,000.00 together with counsel fees and the costs of this action, authorized by the Fourteenth Amendment to the United States Constitution,

28 U.S.C. §2201, and 42 U.S.C. §1983, §2000e-5(g) and §2000e-5(k). This is an action seeking redress for the deprivation of the constitutional and civil rights of plaintiffs named herein and all others similarly situated, as secured under and guaranteed by the said Fourteenth Amendment and under 42 U.S.C. §1983 and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000e through §2000e-17).

3. This Court is authorized by 28 U.S.C. §2201, and 42 U.S.C. §1983, §2000e-5(g), and §2000e-5(k) to grant the relief herein requested.

Class Action Allegations

4. Plaintiffs bring this action, on behalf of themselves and all other PWs similarly situated, as a class action pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure. The plaintiffs are members of a class containing approximately 400 members, which class is so numerous as to make joinder impracticable, composed of PWs whose employment with the PD was terminated on or after June 30, 1975 solely for budgetary reasons.

5. Each plaintiff and member of the class is an adult female citizen of the United States who, prior to June 30, 1975, held a permanent appointment in the classified civil service of the City of New York and was at such time employed by the defendants in the title of PW in the PD.

6. The plaintiffs named herein will fairly and adequately protect the interests of the class in that their mutual and separate claims are typical of the individual claims of the members of the class, there are no conflicts of interest among the members of the class, and there are questions of law and fact common to the class.

7. Final injunctive, declaratory, and monetary relief with respect to the class as a whole is appropriate in that defendants acted and are acting on grounds, challenged by plaintiffs named herein, generally applicable to the class.

8. The defendants have acted and propose to act on grounds generally applicable to the class, thereby making appropriate final injunctive, declaratory, and monetary relief with respect to the class as a whole; to wit, they have terminated the employment of the plaintiffs with the PD on and after June 30, 1975.

Parties

9. The plaintiffs in the action are:

A. Beraldine L. Acha, who resides at 10 Waterside Plaza, New York, New York 10010, was a PW in the PD and served in that capacity from May 29, 1973 until June 30, 1975. She is married and earned the same amount of money as her husband, approximately \$13,000 a year. Beraldine L. Acha provides the sole support for her 9 year old son by a previous marriage, of whom she has custody. She received notice on June 24, 1975 that her employment with the PD would be terminated on June 30, 1975, and her employ-

was terminated on that date solely for budgetary reasons.

B. Arlene M. Egan, who resides at 80-20 249 Street, Bellerose, New York 11426, was a PW in the PD and served in that capacity from June 25, 1973 until June 30, 1975. She is divorced and has custody of her 14 year old son, whom she supports. Her salary of approximately \$13,000, prior to her layoff, was her sole source of income. Her employment was terminated on June 30, 1975, solely for budgetary reasons.

C. Alice J. McCain was a PW in the PD, and served in that capacity from March 25, 1974 until June 30, 1975. Her employment was terminated on June 30, 1975 solely for budgetary purposes.

10. The defendants in the action are:

A. Abraham D. Beame, individually and in his capacity as Mayor of the City of New York.

B. Michael J. Codd, individually and in his capacity as Commissioner of the PD.

C. The City of New York ("the City") a municipal corporation duly incorporated under the laws of the State of New York, and the public employer of plaintiffs and each member of the class.

Factual Allegations

11. Prior to 1973 different examinations were given for the position of PW and Patrolman. An examination for the position of PW was given in 1964 and another one in 1969. Examination.

for the position of PW were given approximately every four years. During the same period of time from 1964 to 1969, approximately nineteen examinations were given for the position of Patrolman and/or Police Trainee. Women were not eligible or permitted to take any of the aforesaid examinations for, or appointed to the positions of Patrolman and/or Police Trainee.

12. In 1969 two examinations were given: No. 9080 for the title of Police Trainee/Patrolman; and No. 9081 for the title of PW. Copies of the notices for examinations 9080 and 9081 are attached as Exhibits "A" and "B", respectively.

13. Although examinations 9080 and 9081 were announced and the examinations were administered separately, the examination questions on the two were the same and the two examinations were graded in the same fashion. Separate eligible lists were, nevertheless, established as a result of the two examinations one for Police Trainee/Patrolman which included only males, and the other for PW which included only female candidates.

14. Examination 9080 was open only to men who were at least 16 years of age on the date of the written examination. A male candidate on examination 9080 between the ages of 17 and 21 when reached for appointment could be appointed as a Police Trainee and would be appointed as a Patrolman when he thereafter attained age 21. On the other hand, examination 9081 for the position of PW required that the female candidate be not less than 19 years of

age on the date of the examination, and not less than 21 at the date of appointment. There was no Police Trainee position made available to women. Each of the named plaintiffs herein took and passed examination 9081, and was appointed from the PW list resulting therefrom.

15. There was a job freeze on hiring by the PD in effect from approximately 1970 through January 1973. During this period of time there were no appointments made directly to the positions of Patrolman or PW, but males who had passed a previous examination and were at the PD Police Academy in a position of Police Trainee were appointed to the PD as Trainees and then as Patrolmen when they attained age 21. In excess of 125 men who had taken examination 9080 who were eligible for the position of Police Trainee were appointed to that position on May 8, 1970. No woman was appointed to the PD U/F during the aforesaid job freeze period.

16. When the job freeze was lifted in January 1973, it was determined by the then Police Commissioner Patrick J. Murphy that men and women be appointed as Patrolmen or Policewomen, respectively, from separate lists for those titles, in a ratio of four men to one woman, regardless of comparative grades on examinations. Although women appointed to the PD U/F subsequent to January 1973 were appointed from a list established as a result of examination 9081, men were appointed from at least eight different lists.

17. As a result of the foregoing, men who had taken the 1969 examination were appointed to the PD prior to women who h.

taken the 1969 PW examination and received higher grades.

18. Since January 1973 approximately 4,236 males have been appointed and approximately 513 females have been appointed to the PD U/F.

19. Men and women appointed to the PD U/F subsequent to 1973 underwent the same medical examination and received the same training at the Police Academy.

20. At all material and relevant times herein, a quota of approximately 2% was fixed and maintained by the PD and the responsible fiscal agencies of the City for the number of women employed in the PD U/F. As of January 1973 the quota was fixed at 354 women to be employed in toto in the PD U/F and 223 women in the title of PW.

21. At all material and relevant times herein women in the PD U/F were appointed to and served in the separate title of PW and men were appointed to and served in the separate title of Patrolman.

22. In 1973 the PD purported to merge the titles of PW and Patrolman for certain internal PD purposes, but the PD duties performed by and designations for the incumbents of the two titles remained substantially separate and distinct.

23. Prior to 1973 the vast majority of women appointed to the PD U/F were initially assigned to the Bureau of Policewomen, whereas men were assigned to precincts throughout the City. After 1973 some women in the PD U/F were assigned to patrol, but most such women continued to have substantially separate and distinct assignments than the men in the PD U/F.

24. Plaintiffs Acha, Egan, and McCain were willing and qualified to take an examination for PW and/or Patrolman and/or Police Trainee subsequent to 1964 and prior to 1969, but no such examination was open to them.

25. If the plaintiffs and each member of the class they represent had had the same opportunities as men to take examinations for and/or to be appointed to the position of Patrolman or Police Trainee in the PD as aforesaid, the plaintiffs and each member of the class they represent would have been appointed to the U/F at respective dates earlier than the respective dates at which they were actually appointed.

26. The seniority dates of the plaintiffs and each of the members of their class for all purposes, including but not limited to layoff and reinstatement, were and remain fixed by defendants at the dates of the respective appointments of the plaintiffs and those members, and not the dates they would have been appointed but for the lack of opportunity referred to in ¶25 hereof.

27. Under New York Civil Service Law §85, additional credit is allowed to veterans on competitive examinations, and preference in retention in the event of layoffs is allowed to certain veterans who were disabled or who served in "time of war." At all material and relevant times herein, and prior to recent amendment of federal law, men were subject to involuntary draft into the armed services of the United States and women were not; presently neither men or women are subject to involuntary draft.

28. As of June 30, 1975, there were 30,374 members in the PD U/F. Of these 21,699 were males and 618 females in the titles of Patrolman or PW. A total of 724 women were employed in the PD U/F.

29. Commencing on or about May 21, 1975, 399 PWs, including plaintiffs and members of the class herein, were notified that their services with the PD were to be terminated on June 30, 1975. A copy of the notice served on plaintiff Arlene M. Egan, which is identical in substance with each such notice served on the plaintiffs and all of the members of their class, is annexed hereto as Exhibit "C". On June 30, 1975, approximately 5,034 members of the PD U/F were terminated solely for budgetary reasons. This number included approximately 399 PWs together with the plaintiffs, whose names have since the above date remained on the list of former members of the PD U/F entitled to reinstatement ("the preferred list"), which is based upon the order of seniority.

30. For purposes of the June 30, 1975 layoffs, the defendants knowingly and intentionally and without just cause or reason therefor, merged the separate titles of Patrolman and PW so as to create a single layoff list of the incumbents of such titles.

31. The termination notices sent to plaintiffs and members of their class were purportedly in conformity with the inverse order of original appointment on a permanent basis as applied to the merged layoff list of Patrolmen and Policewomen.

32. If the plaintiffs and each of the members of the class they represent had been accorded their rightful seniority based upon the dates they would have been appointed to the PD U/F but for the discriminatory acts of the defendants herein complained of, none of them would have been laid off on June 30, 1975 or at any time thereafter to the date hereof for budgetary reasons.

33. If separate layoff lists for the separate Patrolman and PW titles had been established and implemented by the defendants, an equal percentage of the incumbents of such titles would have been laid off on June 30, 1975.

34. The termination of employment of the plaintiffs and members of their class as effected by defendants resulted in a disproportionate impact on the number of women in and employed by the PD. The aforesaid termination resulted in discrimination on the basis of sex, and also resulted, in many cases, to the loss of a sole source of income for plaintiffs and members of their class.

35. The action of defendants herein complained of is facially, patently and statistically discriminatory, to wit:

CHART #1

COMPOSITION OF POLICE DEPARTMENT AS OF DECEMBER 28, 1972

<u>TOTAL UNIFORMED FORCES</u>	<u>#PWs</u>	<u>%PWs</u>
25,210 (active)	282 (active)	1.12% (active)
26,414 (quota)	355 (quota)	1.34% (quota)

CHART #2

COMPOSITION OF POLICE DEPARTMENT AS OF JUNE 12, 1975

<u>TOTAL UNIFORMED FORCES</u>	<u>#PWs</u>	<u>%PWs</u>
25,936 (active)	680 (active)	2.62% (active)

CHART #3

COMPOSITION OF POLICE DEPARTMENT AS OF JULY 1, 1975

<u>TOTAL UNIFORMED FORCES</u>	<u>#PWs</u>	<u>#Male POs</u>	<u>%PWs</u>
20,902	281	20,621	1.36%

CHART #4

APPOINTMENTS TO POLICE OFFICER FROM JANUARY 1973 TO DATE

<u>TOTAL UNIFORMED FORCES</u>	<u>#PWs</u>	<u>#Male POs</u>	<u>%PWs</u>
4,769	513	4,246	10.78%

CHART #5

PERCENTILE REDUCTION IN POLICE OFFICERS TOTAL BY SEX

<u>PW TERMINATED</u>	<u>PWs JUNE 30, 1975</u>	<u>%PWs TERMINATED</u>
399	680	54.6%

<u>MALE POS TERMINATED</u>	<u>MALE POS JUNE 1975</u>	<u>% MALE POS TERMINATED</u>
4,635	25,256	18.35%

36. The actions of the defendants as aforesaid with respect to the hiring and layoffs of the plaintiffs and the members of the class was knowingly, intentionally, and purposefully discriminatory against said plaintiffs and class members by reason of the sex of said plaintiffs and class members, and was without just cause or justification.

37. The resultant loss, damage and injury to the plaintiffs and the members of their class is serious and irreparable for which there is no adequate remedy at law.

38. On or about June 25, 1975, plaintiffs Acha and Egan duly filed complaints with the New York City Commission on

Human Rights and the United States Equal Employment Opportunity Commission ("EEOC"), which in substance, fact and law set forth claims as those hereinbefore stated. A copy of the complaints duly filed with the New York City Commission on Human Rights is annexed hereto as Exhibit "D". A copy of the complaints duly filed by plaintiffs Acha and Egan with the EEOC is annexed hereto as Exhibit "E". Right to sue letters were issued to the plaintiffs Acha and Egan by the Department of Justice on April 2, 1976. Copies of these letters are annexed hereto as Exhibit "F".

39. Plaintiff McCain filed a charge with the EEOC on September 11, 1973. A copy of the complaint is annexed hereto as Exhibit "G". This charge was referred by the EEOC to the New York State Division on Human Rights on or about September 13, 1973. A copy of a letter dated September 13, 1973 from Daniel Murnane Mackey, the District Director of the EEOC, referring the charge of plaintiff McCain to the State Division of Human Rights is annexed hereto as Exhibit "H". Approximately 60 days after deferral of plaintiff McCain's charges to the New York State Division of Human Rights, her charges were automatically filed by the EEOC.

40. Plaintiff McCain's charges with the EEOC alleged that she had been denied a postponement of her medical examination for appointment to the PD at a time when she was pregnant, and that "men applying for the job are called three times." Plaintiff McCain's charge with the EEOC also alleged that "the test [for appointment to the PD] is made available more often [for men] than for women."

The EEOC investigation of her charge dealt with the question of the proportion of hiring of men and women to the PD, and the availability of entrance examinations for the titles of Patrolman and PW.

41. On August 12, 1977, the undersigned, as counsel for plaintiff McCain, received a right to sue letter from the Department of Justice, dated August 10, 1977. A copy of this letter is annexed hereto as Exhibit "I".

42. There has been no previous application by the plaintiffs in any other action or proceeding for the relief sought herein.

43. The actions of the defendants in terminating plaintiffs and members of their class, retaining their names on the preferred list, and otherwise fixing and determining their seniority as aforesaid, are all in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. §1983, and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000e through §2000e-17), in that 54.6% of all PWs, as opposed to only 18.35% of all male Patrolmen were terminated, in that the layoffs were based upon a merged list of PD U/F males and females although separate titles for Patrolman and PW were provided for by law, in that the layoff, reinstatement, and seniority status perpetuated prior invidious discrimination based on sex practiced by the defendants upon the plaintiffs and members of the class they represent, and in that all of

the foregoing acts involved intentional and purposeful discrimination by defendants against the plaintiffs and members of the class by reason of the sex of such plaintiffs and class members. The disparity and discrimination based on sex in all of the foregoing respects are not justified by any business necessity or any other proper or lawful cause. The layoffs and failure to reinstate have resulted in irreparable injury to plaintiffs and members of their class, since they have suffered discrimination based upon sex and many members of the class have lost the ability to support themselves and their families.

Prayer for Relief

WHEREFORE, plaintiffs respectfully pray, on behalf of themselves and all others similarly situated, that this Court:

i) enter a judgment declaring that the termination of the employment of plaintiffs and each member of the class herein by the defendants was in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. §1983 and §2000e-2;

ii) order the immediate reinstatement of plaintiffs and all members of the class they represent, with full rights and benefits retroactive to the date of their layoff;

iii) fix and determine for the plaintiffs and each member of the class they represent, their rightful seniority for all purposes;

iv) enjoin, pendente lite and permanently, the defendants, and their servants, agents, officers, and employees, from

hiring or otherwise reinstating former members of the PD U/F from the preferred list for reinstatement as currently constituted prior to fixing and determining the rightful seniority of the plaintiffs and the members of the class they represent and the revision of the preferred list to reflect such rightful seniority;

v) award plaintiffs and all members of the class they represent, back pay from the date of their termination until the date of their reinstatement;

vi) allow to plaintiffs costs and disbursements as well as reasonable attorneys fees; and

vii) grant such other and further relief as may be proper.

Dated: New York, New York
August 26, 1977

MURRAY A. GORDON, P.C.
Attorney for Plaintiffs

By: 

MURRAY A. GORDON
Office & P.O. Address
666 Third Avenue
New York, N. Y. 10017
212-661-7900

CHARGE OF DISCRIMINATION

(If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE.)

This form is to be used only to file a charge of discrimination on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Case File No. NY 4-0330

(PLEASE PRINT OR TYPE)

1 Your Name (Mr., Mrs., Miss) Alice Jewel McCain indicate Phone Number 378-8841
 Street Address 29 Wagner Avenue
 City Roosevelt, NY State New York Zip Code 11575

2 WAS THE DISCRIMINATION BECAUSE OF: (Please check one)

Race or Color ☐ Religious Creed ☐ National Origin ☐ Sex ☒

3 Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.

Name New York City Police Department (Personnel Dept)
 Street Address New York, NY
 City New York State New York Zip Code _____
 AND (other parties if any) The Medical Unit of that Dept

4 Have you filed this charge with a state or local government agency?

Yes ☐ When MONTH _____ DAY _____ YEAR _____ No ☒

5 If your charge is against a company or a union, how many employees or members?

Under 25 ☐ Over 25 ☐

6 The most recent date on which this discrimination took place: Month 09 Day 05 Year 1973

7 Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary.)

Approximately four years ago I took the New York City Police Woman test # 9081, of which I placed #1103 on the list. After a short time I also took and passed the Physical. I have heard nothing from the police department until August 17, 1973. At which time I was notified to report for investigation & finger printing. At that time I was given addition papers to fill out in reference to investigation of my character. At that time I informed them that I was six months pregnant, due 1 November 1973. I was instructed to explain this to my soon to be assigned investigator. Two weeks later I received a phone call from Off McShea (2nd investigation unit) instructing me to report to his office on 8/31/73 for my interview. At the interview I again explained my condition and was advised not to worry for I would most likely be granted a postponement. However I should wait until I am notified to take my medical, which might not be for some time. Arriving home 8/31/73 I received a letter from the medical unit instructing me to report for my medical 9/13/73. On 9/27 I telephone both the Police medical unit & Office of Personnel requesting a postponement of my medical until six weeks after the birth of the baby. I was told by the medical unit that they could not grant me an extension (although there is no set policy) SEE ATTACHED.

8 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

Date 12/5/73 Alice Jewel McCain
(Sign your name)

Subscribed and sworn to before me this 5 day of December 1973

Richard June
(Name)

EQUAL OPPORTUNITY SPECIALIST
(Title)

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you to get the form sworn to.

ALICE McCATH

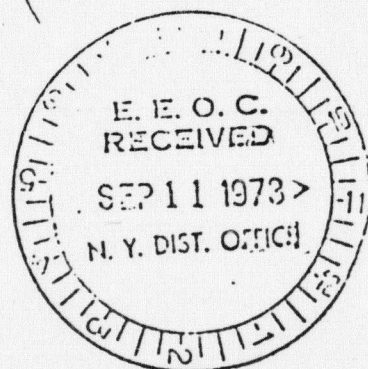
(CONT. OF QUESTION #7)

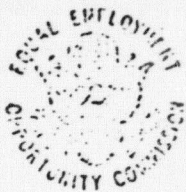
On the I was also informed that if I was to take the medical I would fail. If the list is not in effect when I re-apply (and there is a good chance it won't be in effect), then I would have to start over again. At the present time I am 25yrs old. It has taken them four years to call me, but if I have to go through the whole procedure again there is a chance that I will be over the age limit, which is 29. I am very interested in obtaining this position and feel I am qualified educationally (I am 18 semester hours from receiving my BA degree). My investigator, Officer Mc Shea tells me that there seems to be no problem for ~~as~~ my character investigation goes. I don't think that I have been treated fairly, because my medical condition is not permanent or is it a situation ruling that can apply to all police candidates. I know for a fact that men applying for the job are called three times, and the test is made available more often than for women. However I spoke to a medical officer who in more words informed me that if a woman can not report when called, it is tough.

Please help me!

Sincerely,

Alice McCain
Alice McCain





EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NEW YORK DISTRICT OFFICE
26 FEDERAL PLAZA, ROOM 4002
(11 Foley Square)
NEW YORK, NEW YORK 10007
264 - 3640

Mrs. Alice Jeul McCain
29 Wagner Avenue
Roosevelt, New York 11575

SEP 13 1973

TNY 4-0330
Re: McCain v. NYC Police Department

Dear Mrs. McCain:

We have received your communication alleging unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964, as amended. Under Section 706 of Title VII, this Commission cannot accept your complaint until a state of local agency has had at least 60 days to try to resolve your problem.

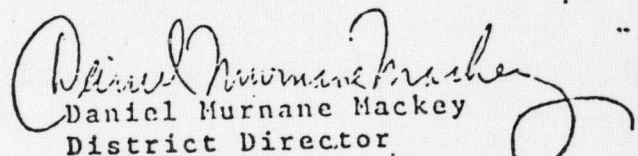
We have, therefore, sent your complaint to the New York State Division of Human Rights, 270 Broadway, New York, N.Y. 10007, and ask you to cooperate fully in their investigation of this matter. Please contact them immediately to be certain that all requirements for commencing proceeding in your case have been met.

Unless we hear from you to the contrary, we will automatically file your complaint after the 60 day period had ended. If the state should end its proceeding earlier than 60 days we will file the complaint when it does so, unless we hear from you to the contrary.

If the state has not been able to resolve your complaint, we will undertake an investigation as soon as possible.

I must, however, tell you that we have many charges on file and it may be many months until we can actually begin an investigation. Please be patient and we will contact you as soon as resources allow.

Sincerely,


Daniel Murnane Mackey
District Director

Exh. H



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NEW YORK DISTRICT OFFICE

90 Church Street, Room 1301

NEW YORK, NEW YORK 10007

264-7161

SEP 13 1973

CERTIFIED NO.

CASE CONTROL UNIT-EEOC SECTION
State of New York
Division of Human Rights
270 Broadway
New York, N.Y. 10007

In reply refer to:
TNY 4-0330

Dear Mr. Cohen:

The enclosed communication has been submitted to us alleging a violation of Title VII of the Civil Rights Act of 1964, as amended. Pursuant to Section 706(b) of the Act, no charge may be filed with this Commission under Section 706(a) until the expiration of 60 days after proceedings have been commenced under a state or local fair employment practice agency of New York, unless proceedings are terminated earlier.

If the Charging Party has filed a charge with your organization alleging substantially the same complaint, please inform us when Charging Party did file a complaint with your office. If Charging Party did not, notify us of the date of your receipt of this letter and the filing of the enclosed document from the Charging Party.

We would appreciate being informed of the status of this matter at the expiration of the 60 day of statutory period, or at the time you terminate the proceedings, whichever occurs earlier.

On the 61st day after your receipt of Charging Party's charge, or upon earlier termination by you, the Commission will automatically file the charge unless the Charging Party notifies us to the contrary.

In any event, we wish to receive all information you are able to provide about this charge including your final determination or settlement regarding this charge.

Thank you for your kind cooperation in this matter.

Sincerely yours,

Daniel Murnane Mackey
Daniel Murnane Mackey
District Director

EXH-4
Enclosure:

Charging Party's complaint

AD131

Service of three ~~2~~ copies of the within
is admitted this day of 19

160
THREE COPIES OF THE WITHIN PAPER
HAVE THIS DAY BEEN RECEIVED AT THE
-FICE OF THE CORPORATION COUNSEL
CORPORATION COUNSEL
Sept 17, 1977